140-183
140-183

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 175.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, AND ROBERT CLUETT, APPELLANTS,

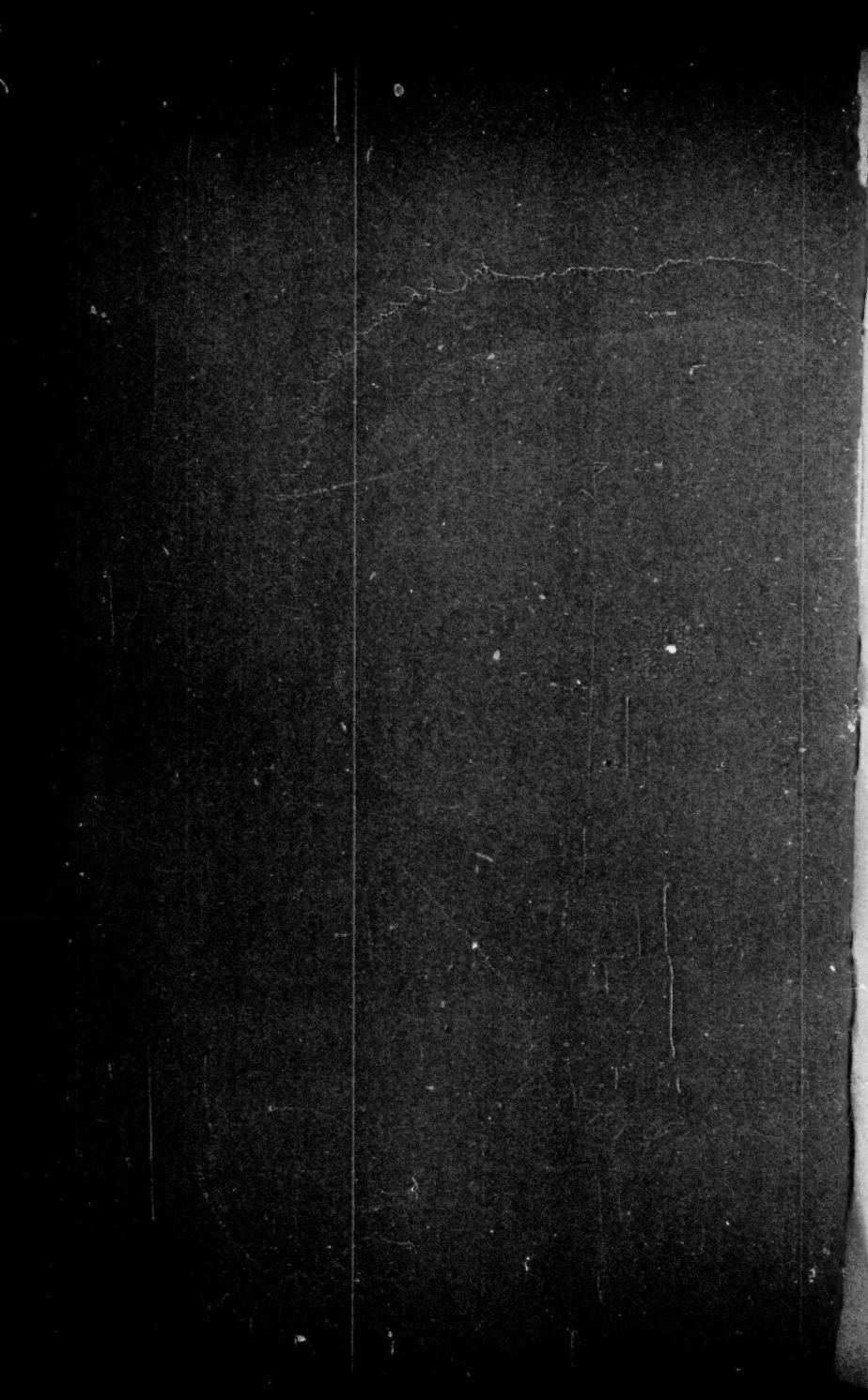
vs.

JOHN McNEANY, ED. ELISHA MACK, AND WILLIAM M. TICKNOR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 11, 1887.

Start of Roll



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 175.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, AND ROBERT CLUETT, APPELLANTS,

vs.

JOHN McNEANY, ED. ELISHA MACK, AND WILLIAM M. TICKNOR.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Subpœna	1	1
Marshal's return	2	1
Bill of complaint	3	1
Appearance for Mack and Ticknor	11	5
Replication	13	6
Answer of Mack and Ticknor	14	6
Amendment to answer and consent and order thereon	20	9
Amendment to answer and consent and order thereon	21	10
Evidence for complainants	23	10
Notice to take testimony	23	10
Consent as to examiner	25	10
Testimony of George H. Benjamin	26	12
Evidence for defendants	63	34
Testimony of Isaac H. Mambert	63	34
Final decree	73	40
Stipulation as to record and exhibits	75	40
Stipulation as to use in this case of testimony in Cluett *et al. vs.* Claflin *et al.*	75½	41
Petition of appeal	76	41
Bond on appeal	79	42
Citation (copy)	82	44
Affidavit of service of citation, &c.	85	44
Clerk's certificate	87	45

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 15, 1890.

1 [L. S.] The President of the United States of America to John McNeany, Ed. Elisha Mack, and Wm. M. Ticknor, Greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of May, A. D. 1886, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by George B. Cluett and others, and do further and receive what the said court shall have considered in that behalf; and this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 23rd day of March, in the year one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and tenth.

(S'g'd) TIMOTHY GRIFFITH, *Clerk.*

JAS. A. SKILTON,
Complainants' Sol'r.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of May, 1886, or the bill will be taken *pro confesso* against them.

(S'g'd) T. G., *Clerk.*

2 (Endorsed:) I hereby certify that on the 9th day of April, 1886, at the city of New York, in my district, I personally served the within subpœna in equity upon the within-named defendant, Ed. Elisha Mack, by exhibiting to him the within original and at the same time leaving with him a copy thereof. Dated April 9, 1886. (S'g'd) M. T. McMahon, United States marshal, southern district of New York, per John E. Dowley, deputy.

(File-mark:) U. S. circuit court. Filed Apr. 13, 1886. Timothy Griffith, clerk.

3 United States Circuit Court, Southern District of New York.
In Equity.

To the honorable the judges of the circuit court of the United States for the second circuit within and for the southern district of New York, sitting in equity:

In Equity.

George B. Cluett, J. W. Alfred Cluett, and Robert Cluett, all citizens of the State of New York, bring this their bill against John McNeany, of the city of Brooklyn, county of Kings, and State of New York; Ed. Elisha Mack and Wm. N. Ticknor, both of the city and

county of Albany and State of New York, all citizens of the United States and of the State of New York.

And thereupon your orators complain and say that heretofore, to wit, before the 17th day of November, 1874, Robert Cluett, one of the above-named complainants, was the original and first inventor of a certain new and useful improvement in shirts, not known or used by others before his invention or discovery thereof and not in public use or on sale for more than two years prior to his
4 application for letters patent therefor, and duly prepared, executed, and filed in due form of law, with the proper Department of the Government, the necessary papers required by the statute preparatory to obtaining letters patent of the United States therefor; upon which application such proceedings were had that on the seventeenth day of November, 1874, letters patent of the United States, dated on said day, signed by the Secretary of the Interior and countersigned and sealed with the seal of the Patent Office by the Commissioner of Patents and numbered letters patent number 156,880, were issued and delivered to the said Robert Cluett for the said invention, entitled "an improvement in shirts," whereby there was granted unto the said Robert Cluett, his heirs, administrators, and assigns, for the term of seventeen years from the said date thereof, the full and exclusive right and liberty of making, using, and vending to others to be used the said improvement, as in and by a certified copy of the said letters patent, here in court to be produced and shown to your honors, will more fully appear.

And your orators further show unto your honors that on the 28th day of June, 1875, the said Robert Cluett, by his deed of that date, duly executed and recorded December 23, 1876, in Liber C 21, page 188, for a valuable consideration, conveyed to the said George B. Cluett, J. W. Alfred Cluett, and Robert Cluett, jointly, at that time constituting the said firm known and doing business under the firm name and title of Geo. B. Cluett, Brother & Co., all his right, title, and interest in and to the invention and discovery secured by the said letters patent in and for the whole United States of America, with exclusive right and license therein to manufacture, use, and vend the said "improvement in shirts," as described and claimed in said letters patent, during the unexpired term of said let-
5 ters patent, as by the said deed, in court to be produced, if required, will more fully appear.

And your orators further show unto your honors that your orators have always since the said conveyance, and in the exercise of the full and exclusive liberty so granted and conveyed as aforesaid, made, used, and vended to others to be used the said improvement so patented, and have had and maintained until within a short time previous to the infringement hereinafter complained of exclusive possession of the said improvement and invention under and by virtue of said letters patent, and have never acquiesced in any infringement or invasion of their said rights, and that the right of your orators to the exclusive use and enjoyment of said invention, as covered by said letters patent and acquiesced in by the public, has been generally respected.

And your orators further represent and charge, upon information and belief, that the said John McNeany, Ed. Elisha Mack, and Wm. H. Ticknor, defendants herein, since the issue of said letters patent and the said conveyance thereof to your orators as aforesaid, well knowing the premises and intending and devising to infringe upon and violate the exclusive rights of your orators under and by virtue of said letters patent, have been engaged, in the city and county of New York and in the city of Brooklyn, county of Kings, in the State of New York, and elsewhere within the United States and within the jurisdiction of this court, and without any license or authority so to do, in making, using, and vending large quantities of shirts involving the invention secured to your orators as aforesaid by or under the said letters patent and said deed—how many your orators are unable to state, but pray that the defendants may discover and set forth in their answer to this bill—none of said
6 articles so made, used, or vended by said defendants having been made by any person or persons authorized or licensed to use the said patented inventions; all of which acts of the said defendants are in flagrant violation of the exclusive rights of your orators under and by virtue of said letters patent and the deed thereof hereinbefore mentioned; and by means of the premises the defendants have infringed upon and still continue to infringe and violate the said exclusive rights and privileges of your orators, secured to them as above stated.

And your orators further show unto your honors that the shirts which have been made and are being made and sold by the defendants as aforesaid use and employ the elements and devices below described, which elements are actually the same as or equivalent to those described in and secured by the said letters patent, are combined and related to each other in the same manner, and are infringements of said letters patent, to wit: Said shirts consist in some instances of the following elements, combined in the following manner: 1st, a shirt body; 2d, a shirt bosom bound on the outer edge with a folded and stitched binding; and, 3d, the shirt bosom attached to the shirt body by a separate line of stitching through such binding, being substantially the same as set forth in the first claim of said letters patent. In other instances they consist of, 1st, a shirt bosom composed of two or more thicknesses of cloth; 2d, a binding on the outer edge of the shirt bosom; and, 3d, a line of stitching which secures them to the shirt front, being substantially the same as set forth in the second claim of said letters patent.

In consideration whereof and forasmuch as your orators can only have adequate relief in a court of equity, where matters of this nature are properly cognizable, to the end, therefore, that the
7 said defendants may, if they can, show why your orators should not have the relief hereby prayed, and that the said defendants may, upon oath, to the best and utmost of their knowledge, remembrance, and belief, full, true, and perfect answer make hereto and to such of the several interrogatories hereinafter mentioned and set forth as by the note hereunder written they are required to answer—that is to say:

1st. Whether letters patent were not issued to the said Robert Cluett, as herein set forth.

2d. Whether said letters patent were not duly assigned and set over unto your orators by a deed duly recorded, and whether your orators are not now the sole and exclusive owners thereof.

3d. Whether the said defendants have not since the issue and conveyance of said letters patent as aforesaid made, used, or vended various articles made in accordance with the invention covered by said letters patent without any license or authority so to do.

4th. Whether a portion of such articles so made and sold as aforesaid were not composed of the following elements:

1st, a shirt body; 2d, a shirt bosom bound on the outer edge with a folded and stitched binding; and, 3d, the shirt bosom stitched to the shirt body by a separate line of stitching through such binding.

5th. Whether another portion of such articles so made and sold as aforesaid was not composed of the following elements: 1st, a shirt bosom composed of two or more thicknesses of cloth; 2d, a binding on the outer edge of the shirt bosom; and, 3d, a line of stitching which secures them to the shirt front; and

6th. What amount of such articles so made and in accord-
8 ance with said invention the defendants have manufactured or sold since the date of said conveyance of said letters patent and invention, and what profit has been made or derived therefrom by the said defendants.

And your orators further pray that the said defendants may be forthwith restrained by a writ of injunction issuing out of and under the seal of this honorable court from making or vending any article involving or embracing or manufactured in pursuance of the invention secured to your orators by virtue of said letters patent, and from all violation or infringements of the exclusive rights of your orators under or by virtue of said letters patent, and that on the final hearing of this cause the said injunction may be made perpetual.

And, further, that said defendants may be decreed to account to your orators for all profits realized by them from sales of articles made pursuant to the said invention, as secured to your orators by said letters patent, in violation of the exclusive rights of your orators, and also to pay to your orators, in addition to said profits, the damages which have been sustained by your orators by reason of said infringement; and that your orators may have such other and further relief in the premises as the nature of the case may require and as may be according to equity and good conscience.

And may it please your honors to grant to your orators a writ of subpœna, to be directed to the said defendants, John McNeany, Ed. Elisha Mack, and Wm. M. Ticknor, commanding them at a certain day and under a certain penalty to be and appear before this honorable court and then and there full, true, direct, and perfect answer to make to all and singular the premses, whether specially interrogated thereto or not, and, further, to stand to, abide
9 by, and perform such further orders, direction, and decrees therein as to your honors shall seem meet and proper.

NOTE.—Each one of the defendants are required to answer each interrogatory.

(Signed) ROBERT CLUETT.
(S'g'd) JAMES A. SKILTON,
Solicitor and of Counsel for Complainants.

UNITED STATES OF AMERICA, } ss:
Northern District of New York, }

On this 3rd day of March, 1886, before me, a United States commissioner, personally appeared Robert Cluett, one of the complainants above named, who, being duly sworn, did depose and say that he has heard read the foregoing bill in equity and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

(S'g'd) ROBERT CLUETT.

Subscribed and sworn to before me this 3rd day of March, 1886.
(S'g'd) JOHN A. OSBORN,
U. S. Commissioner, S. D. N. Y.

10 (Endorsed:) U. S. circuit court, southern district of New York. George B. Cluett & *als. vs.* John McNeany & *als.* Bill of complaint. James A. Skilton, compl'ts' sol'r.
(File-mark:) U. S. circuit court. Filed March 23, 1886. Timothy Griffith, clerk.

11 Circuit Court of the United States for the Southern District of New York, Second Circuit.

GEORGE B. CLUETT *et al.*
vs.
JOHN MCNEANY, ED. ELISHA MACK, and WM. M. TICKNOR. } In Equity.

The clerk will please enter my appearance as solicitor for the above-named defendants, Ed. Elisha Mack and Wm. M. Ticknor.
Dated New York, April 19th, 1886.
Yours, &c.,
(S'g'd) DAVID TIM,
Solicitor for Defendants, Ed. Elisha Mack and Wm. M. Ticknor, 25 Chamber St., New York City.

(Endorsed:) U. S. circuit court, southern dist. of New York George B. Cluett & *al. vs.* John McNeany, Ed. Elisha Mack, and Wm. M. Ticknor. Notice of appearance of Ed. Elisha Mack, and Wm. M. Ticknor. David Tim, solicitor for defendants, Ed. Elisha
12 Mack and Wm. M. Ticknor, 25 Chamber St., N. Y. city.
(File-mark:) U. S. circuit court. Filed Apr. 20, 1886. Timothy Griffith, clerk.

13 *Replication.*

United States Circuit Court, Southern District of New York.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
vs.
JOHN MCNEANY, ED. ELISHA MACK, and WM. M. TICKNOR. } In Equity.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto say that they will aver and prove their said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

JAMES A. SKILTON,
Complainants' Solicitor.

(Endorsed:) U. S. circuit court, southern dist. of N. Y. Cluett & *al. vs.* McNeany & *al.* Replication.
(File-mark:) U. S. circuit court. Filed June 22, 1886. Timothy Griffith, clerk.

14 Circuit Court of the U. S., Southern District of New York.
In Equity.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
against
JOHN MCNEANY, ED. ELISHA MACK, and WILLIAM M. TICKNOR.

The answer of Ed. Elisha Mack and William M. Ticknor, respondents, to the bill of complaint exhibited against them by the above-named complainants.

The respondents, now and at all times hereafter saving and reserving to themselves all and all manner of benefit of exception which may be had or taken to the manifold errors, uncertainties, imperfections, and insufficiencies of the said bill of complaint,
15 for answer thereto or to so much as they may be advised it is material or necessary to make answer to, answering, say—

That upon information and belief alone they admit that letters patent of the United States were issued to a person of the name alleged in this bill, and at the date therein referred to, for an alleged invention therein referred to; but whether any of the provisions or

requirements of law were duly or at all complied with they have no knowledge or information and cannot set forth and leave the complainants to make such proof thereof as they may be advised.

The respondents, further answering, say that they are not advised save by the bill of complaint whether said letters patent were assigned to said complainants, as set forth in said bill or otherwise, or whether said alleged assignment was duly or at all recorded in the Patent Office, and leave the complainants to make such proof thereof as they may be advised.

And the respondents, further answering, deny that they have ever at all in any way infringed upon the aforesaid letters patent or that they are now infringing upon the same or intend so to do.

And the respondents, further answering, say that they are informed and believe that the said letters patent and each and every part thereof are void and of no effect at law, because that the said alleged invention had been prior to said alleged invention or discovery thereof patented by the following-named persons in and by the following-named patents:

U. S. letters patent No. 134,909, granted to A. D. Marr January 14th, 1873.

U. S. letters patent No. 146,656, granted to A. Conger January 20th, 1874.

U. S. letters patent No. 111,978, granted to A. Salmon Feb. 21, 1871.

English letters patent No. 3036, granted to R. A. Ford and W. A. Page December 11th, 1860.

16 English letters patent No. 1725, granted to William Edward Newton June 28th, 1865.

English letters patent No. 92, granted to Peter McIntyre January 13th, 1864.

English letters patent No. 1594, granted to Benjamin Nicoll June 24th, 1864.

French letters patent No. 97034, granted to A. M. Jay October, 1872.

And the respondents, further answering, say that the said letters patent and each and every part thereof are void and of no effect in law, because that the said alleged invention had been described in some printed publication prior to the supposed invention or discovery thereof by the complainants, to wit, the letters patent last referred to.

And the respondents, further answering, say that the said letters patent and each and every part thereof are void and of no effect in law, because that the said alleged inventor was not the original and first inventor or discoverer of any material or substantial part of the said alleged invention or discovery, but that the same and every material and substantial part thereof had been previously invented and used by and known to the following persons at the places set opposite their names respectively, such persons now residing, to the best of the respondents' knowledge and belief, at the places respectively specified:

George Richardson, Morris Kohn, Michael C. Hirsh, Jacob Bloch,

Samuel Vendig, L. & S. Sternberger, Alexander Sinsheimer, Jacob Loeber, Peter Michael, John Sitz, David Wallace, and E. C. Beebe, and F. Sache, at the city of Philadelphia and elsewhere in the United States, and all of whom now reside in the city of Philadelphia, in the State of Pennsylvania.

Isaac Frank, Victor H. Rothschild, Albert Burkhardt, Albert Aaronson, H. Spiegel, Louis Frank, Jacob Shire, Jacob Wallach and Isaac Wallach, M. Ballin, Samuel Stern, Levi Price, Emile Weil, Joseph A. Carburg, and Moses Cahm and Lemuel Serrell, at
17 the city of New York and elsewhere in the United States, and all of whom now reside in the city, county, and State of New York; and Hugh W. McClellan, at Chatham, New York; Myron E. Clarke, at Chatham, New York; H. M. Ford, at Chatham, New York, and Daniel Leonard, at Albany, New York.

And the respondents, further answering, say that the said letters patent and each and every part thereof are void and of no effect in law, because that the said alleged invention had been in public use and on sale in this country for more than two years before the said inventor and patentee made application for a patent therefor, and that the same had been abandoned to the public by the said inventor and patentee, and that the same was previously known to the persons heretofore named as having prior knowledge, who reside at the places set opposite their names.

And the respondents deny that said letters patent or the alleged rights of the complainant have ever been at all acknowledged or acquiesced in; but, on the contrary, that that the said alleged invention has been publicly used in defiance and disregard of any alleged rights of the complainants.

And these defendants further allege that, taking into consideration the state of the art at the time the said improvement was alleged to have been made by the person named in the complaint, the said letters patent do not describe or claim any construction the production of which involved anything more than mere mechanical skill, and that for this reason the said letters patent do not contain any patentable invention and are therefore void.

For answer to the first and second interrogatories, defendants say that they have by their answer sufficiently replied thereto.

For answer to the third interrogatory, defendants say "No."
18 For answer to the fourth interrogatory, defendants say "No."

For answer to the fifth interrogatory, the defendants say "No."

For answer to the sixth interrogatory, the defendants say that they have by their other answers sufficiently replied thereto.

And the respondents deny all and all manner of unlawful combination by the said bill charged; without this, that there is any other matter, cause, or thing in the said bill of complaint contained (material or necessary to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied) true, to the knowledge or belief of the respondents; all which matters and things the respondents are ready and willing to aver, maintain, and prove as this honorable court shall direct, and

humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(S'g'd) ED. ELISHA MACK.
W. M. TICKNOR.
DAVID TIM,
Respondents' Solicitor.

LOUIS C. RAEGENER,
Of Counsel.

19 UNITED STATES OF AMERICA, }
Southern District of New York, County of New York. }

On this 10th day of August, one thousand eight hundred and eighty five, before me came Ed. Elisha Mack and William M. Ticknor, the above-named respondents, and, being by me duly sworn, did each for himself depose and say that he had read the foregoing answer, and that the same is true of his own knowledge except as to those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

[NOTARIAL SEAL.] ALEXANDER SELKIRK,
Notary Public in and for Albany County, N. Y.

(Endorsed:) Circuit court of the United States, southern district of New York. George B. Cluett & *als. vs.* John McNeany & *als.* Answer. David Tim, def'ts', Mack & Ticknor, solicitor, 25 Chambers St., New York. U. S. circuit court. Filed May 24, 1886. Timothy Griffith, clerk.

20 Circuit Court of the United States, Southern District of New York. In Equity.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT }
vs.
JOHN MCNEANY, ED. ELISHA MACK, and WILLIAM M. TICKNOR. }

Amendment to the Answer in this Cause.

1. In section 2, on page 4, after the name "Moses Cohen" and before the words "at the city of New York," insert "Moses Cahm and Lemuel W. Serrell."

2. At the top of page 3, after the words "January 20, 1874," and before the words "English letters patent 3036, &c.," insert "United States letters patent, A. Salmon, No. 111,978, February 21, 1871, for shirts."

We consent to the entry of an order allowing the within amendment to the answer to be filed.

21 New York, December 7th, 1885.

JAMES A. SKILTON,
Compl'ts' Solicitor.
DAVID TIM,
Def'ts' Solicitor.

Ordered accordingly.
New York, December 8th, 1885.

WM. J. WALLACE, *Judge.*

Circuit Court of the United States, Southern District of New York.
In Equity.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
vs.
JOHN MCNEANY, ED. ELISHA MACK, and WILLIAM M. TICKNOR.

Amendment to the Answer in this Cause.

On the fourth page, after the words "city, county, and State of New York," insert:

"Hugh W. McClellan, at Chatham, New York.
"Myron E. Clarke, at Chatham, New York.
"H. M. Ford, at Chatham, New York.
"Daniel Leonard, at Albany, New York.

22 "—— Thomas (whose Christian name is not known to these defendants, but which they beg leave to insert upon ascertaining the same), at Troy, New York."

We consent to the entry of an order allowing the within amendment to the answer to be filed.

New York, October 7th, 1885.

(Signed) JAMES A. SKILTON,
Complainants' Solicitor.

(Signed) DAVID TIM,
Defendants' Solicitor.

Ordered accordingly.
New York, October 8th, 1885.

WM. J. WALLACE, *Judge.*

23 *Notice of Taking Testimony.*

United States Circuit Court, Southern District of New York.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
vs.
JOHN MCNEANY, ED. ELISHA MACK, and WM. M. TICKNOR.
} In Equity.

SIR: Please take notice that we shall proceed to take proofs for final hearing herein on behalf of complainants, under the 67th rule in equity, in accordance with the statute in such cases made and provided and in accordance with the stipulations entered into herein, before Wm. H. Butterworth, a notary public, at his office, No. 115 Broadway, N. Y., on Wednesday, August 4, 1886, at 10 o'clock a. m. You are invited to attend and cross-examine the witnesses.

The examination will be continued from day to day.
Dated New York, July 28, 1886.

JAMES A. SKILTON,
Solicitor for Complainants.

To David Tim, solicitor; Louis C. Raegener, of counsel for defendants.

The names of witnesses are as follows:
Dr. George H. Benjamin, Robert Cluett, and others.

24 *Testimony on Part of Complainants.*

In the United States Circuit Court, Southern District of New York.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
vs.
JOHN MCNEANY, E. ELISHA MACK, and WM. M. TICKNOR.
} In Equity.

Testimony taken on the part of complainants, under and pursuant to notice and consent (hereunto annexed), before William H. Butterworth, a notary public, at his office, No. 115 Broadway, New York, on Wednesday, August 4, 1886, at 10 o'clock a. m.

Present: James A. Skilton, Esq., solicitor for complainants.

Adjourned, at the request of counsel for defendants, until Thursday, August 5, 1886, at the same hour.

NEW YORK, *August* 5, 1886.

Met pursuant to adjournment.

Present: James A. Skilton, Esq.

Adjourned, by consent, until Friday, August 6, 1886, at the same hour.

25 *Testimony on Part of Complainants.*

NEW YORK, *August 6th*, 1886.

Met pursuant to adjournment.

Present: James A. Skilton, Esq.

Adjourned, by consent, to Aug. 16, 1886, at 10 a. m.

NEW YORK, *August* 16, 1886.

Adjourned, by consent, to August 19, 1886, at 10 a. m. Further adjourned subject to notice.

NEW YORK, *August* 26, 1886.

Met, pursuant to notice, at 10.45 o'clock a. m.

Present: James A. Skilton, solicitor for complainants; Louis C. Raegener, Esq., solicitor for defendants, and George H. Benjamin, Esq., the witness.

It is stipulated and agreed by solicitors and counsel on behalf of both parties that in the absence of the notary, William H. Butterworth, who is mentioned in the notices as the notary for taking this testimony, the testimony on behalf of complainants herein in rebuttal may and shall be taken by and before Edward S. Berrall, notary public, No. 115 Broadway, New York.

26 GEORGE H. BENJAMIN, a witness produced on the part of the complainants, was duly sworn and testified as follows:

Q. 1. What is your name, age, residence, and occupation?

A. George H. Benjamin. I am 33 years of age. I reside at Short Hills, Essex county, New Jersey, and have my office in the city of New York. I am by occupation a mechanical engineer.

Q. 2. Please state what experience you have had in the practice of your profession, and also state whether you have been called upon to testify in the courts or elsewhere in relation to inventions and patents.

A. I have been engaged in the practice of my profession as mechanical engineer for the past seven years, during which time I have been frequently employed to design, construct, operate, and test machines of various kinds. I have for the past five years been almost wholly occupied in examining patents, patented devices, and machines, and I have frequently been called upon to give opinions or to testify in suits before the Patent Office and United States courts regarding the identity or diversity of devices or patented inventions. For two years I acted as associate editor of Appleton's Cyclopedia of Applied Mechanics, and while so engaged was brought directly into contact with the majority of the manufacturing industries of this country and Europe. Many of the articles contained in the said work descriptive of machines, manufactures, &c., were prepared and written by me. I am familiar, from personal observation, with the methods employed in shirt manufacture, as also with the subsequent treatment of the manufactured article prior to its being offered for sale or adapted for use. I refer to the process of laundering.

27 The article on laundering machinery in the before-mentioned cyclopedia was written by me.

Mr. Skilton offers in evidence the Cluett patent here in contest for an improvement in shirts, No. 156,880, dated Nov. 18, 1874, and the same is marked Complainants' Exhibit Cluett Patent, E. S. B., notary public; also a certified copy of the assignment of Robert Cluett to George B. Cluett, Brother & Company, and the same is marked Complainants' Exhibit Cluett Assignment, E. S. B., notary public.

Q. 3. Have you examined and are you familiar with the patent here in question and with the invention therein described?

A. I have frequently examined the patent referred to in the question, which I understand to be complainants' patent upon which this suit is founded. I believe that I thoroughly understand the invention described therein, and likewise that I thoroughly understand the manufacture and uses of the article described therein.

Mr. Skilton offers in evidence one shirt of the defendants' manufacture, and the same is marked Complainants' Exhibit Defendants' Shirt, E. S. B., N. P.

It is admitted that the above-mentioned exhibit was manufactured and sold by the defendants herein prior to the filing of the bill herein and outside of the northern district of New York, within the United States.

Q. 4. Have you examined the Complainants' Exhibit Defendants' Shirt, E. S. B., N. P., and do you enderstand its method of construction?

28 A. I have examined the exhibit referred to in the question, namely, Complainants' Exhibit Defendants' Shirt, and I believe that I thoroughly understand its construction, as also the the method of manufacture and use of the said exhibit.

Q. 5. Please compare the exhibit mentioned in the last question with the devices and combination of devices shown and claimed in Complainants' Exhibit Cluett Patent and state whether you find in that exhibit substantially the invention claimed in that patent, and in giving your answer please state your reasons for any opinions you may express.

A. I have frequently made the comparison called for by the question and I am clearly of the opinion that the defendants' shirt, as illustrated by the Complainants' Exhibit Defendants' Shirt referred in the question, does contain the invention referred to in both claims of complainants' patent. Referring to the Cluett patent, I will first state what I understand to be described and referred to as the invention of the two claims of the patent. The patent refers to a shirt, and for the purposes of analysis I will divide the invention into three parts: First, an improved shirt bosom; second, the method of attaching a shirt bosom to a shirt body, and, thirdly, the shirt as a completed whole—as an article of manufacture, the shirt having a bound and stitched bosom. I understand, further, that that the invention relates to a shirt made of a material adapted to be laundered to fit it for use—that is to say, a shirt wherein the body is of muslin or similar material and in a flexible or semi-flexible condition, and wherein the bosom is of one or more layers of linen or similar material and starched, ironed, or otherwise finished to be rigid or stiff—a shirt having the features as stated in contradistinction to a shirt made from a cotton or woollen fabric—such, for instance, as flannel or knit goods—and wherein the body and

29 bosom of the shirt are both flexible and intended to be so in the finished shirt—that is, a shirt wherein no starch or other stiffening material is employed to put it into condition for use. I un-

derstand further that the invention relates to a shirt wherein the bosom, when starched and ironed, as in a finished shirt, will lie in a plane differing from that occupied by the body of the shirt. I understand likewise that the patent relates to and describes a bosom made up of one or more layers of suitable material laid smoothly over another layer or layers, and so arranged as regards the body of the shirt that all the raw, selvedge edges or loose threads or both of the bosom or of the shirt body at the point of attachment at the bosom shall be concealed or, so to speak, pocketed—that is to say, no free or selvedge edges or loose threads will be left out or open to view. I understand further that the invention relates to the means whereby the raw or selvedge edges and loose threads of the bosom and shirt body are pocketed or concealed, such means consisting of a binding. The invention as a whole I understand to be for a shirt with a bound bosom, a shirt comprising a shirt body and a shirt bosom united together through the intermediation of a binding and stitching, the arrangement or relation of the several parts being such that all the raw or selvedge edges or loose threads are concealed or pocketed. The objects of the invention may be stated to be: 1st, to avoid the necessity of folding in the raw edges and loose threads of the bosom, which I understand to be the method of manufacture commonly employed by the trade or others prior to the invention of complainants' device; 2d, by means of the binding to stay the bosom, rendering it firmer in itself and less likely to rumple and break; 3d, to avoid fulling up of any one of the layers composing the bosom, which I understand to be a frequent source of trouble in the older methods of shirt manufacture, all of these three features having reference to the preparatory stages of the manufacture of the bosom itself; 4th, to furnish a ready means of attaching the bosom to the shirt body, thereby facilitating the manufacture and cheapening the cost; 5th, to strengthen the point of attachment between the bosom and the shirt body, thereby rendering the bosom better adapted to withstand wear and calculated to outlast the shirt body; 6th, to afford greater facility for ironing the shirt and less liability to the destruction of the shirt bosom in the flattening process of ironing. The devices described in complainants' patent are made up essentially of the following elements: First element. A shirt body made of the usual material or materials and in the ordinary manner, two forms being shown—(A) wherein the front or bosom portion is continuous with and of the same material as the rest of the shirt body; (B) wherein the front or bosom portion is cut out to approximately the size and shape of a separately made bosom designed to be subsequently applied over the opening of the shirt body. Second element. A shirt bosom of any desired shape made from one or more layers of any suitable material or materials, laid smoothly one over the others and having arranged over the outer edge thereof a folded straight or bias binding. Two plans or methods for cutting the layers of the bosom are shown and described—(C) wherein the layers of the bosom are of the same size and their edges are covered by a binding, this style of bosom being adapted to be secured upon a shirt body with a con-

tinuous front, of the style shown in Fig. 4 of the drawings of complainant's patent, and attached to said body by a single line of stitching. In this arrangement of parts the front of the shirt body serves as an extra layer or backing for the bosom. This form of bosom may, however, be used with a shirt body having
31 a cut-out front, as shown in figure 11 of the drawings of complainants' patent; (D) wherein all the layers of the bosom are of the same size, or wherein the bottom or back layer is slightly larger than the others, and wherein all the layers, except the back layer, are included between the edges of the binding. This form of bosom is adapted to be applied to a shirt body having a cut-out front, as shown in figure 11 of the drawings of complainants' patent, the back layer of the bosom in this case being the equivalent for the shirt body, as described in the former instance. Two methods of attaching this style of bosom to the shirt body are described. The first method consisting in stitching the back layer of the bosom to the shirt body, the raw edges of the superior layers of the bosom being bound with a folded binding, and subsequently attaching or connecting the whole to the body of the shirt by a line of stitching which completes the binding. The second method consisting of attaching the bosom to the shirt body by a single line of stitching passing through the binding, or, the binding, the included edges of the shirt bosom, the back layer of the bosom, and the shirt body. A third method is indicated, which consists in first stitching the back layer of the bosom to the shirt body, and subsequently completing by binding the whole. Third element: A binding. The specification describes and the patent relates to a binding formed from a straight or biased strip of material, which is not limited as to width, and which may be applied in any convenient manner, so long as it performs its office, which I understand to be the pocketing or covering of the raw edges and loose threads of the bosom or bosom and shirt body. The binding is described as folded. This I understand to refer to the edges of the binding. The binding, I understand, is to be attached to the shirt bosom by a line of stitching. The position of the line of stitching which secures the
32 binding to the shirt bosom I do not consider to be material, so long as it serves a like purpose. I am of the opinion that the position of the line of stitching which secures the back layer of the bosom to the shirt body is not material, providing the result be the same. I am of the opinion that the position of the line of stitching which secures the bosom to the shirt body is not material, so long as the conjunction of parts brought into relation thereby is substantially the same. I am clearly of the opinion that the binding—the office of which being taken into consideration, namely, to practically pocket and conceal the raw selvedge edges and loose threads of the shirt bosom and the shirt body—may be arranged and secured in a number of different ways, depending upon obvious changes in the relation of the bosom to the shirt body or the shirt body to the bosom, without departing from the character and intent of the invention.

The first claim of the patent, I understand, refers to the article of

manufacture—the shirt, as a whole, comprising a shirt body and a shirt bosom attached to said shirt body through the intermediation of a folded and stitched binding and one or more lines of stitches.

The second claim I understand likewise to be for an article of manufacture, comprising a shirt body and a shirt bosom, bound on the outer edge with a binding and attached to said shirt body.

When I compare Complainants' Exhibit Defendants' Shirt with the device shown and described in complainants' patent I find that it is in all respects substantially identical, and contains all the elements of complainants' device, to wit, a shirt body, a shirt bosom, a binding covering the raw edges of said bosom and attached thereto by a line of stitching, and said binding and bosom attached to the shirt body by a line of stitching passing through the binding and shirt body absolutely identical. Taking the elements indi-
33 vidually, we have, first, a shirt body with a closed front; second, a shirt bosom formed of one or more layers; and, thirdly, a binding covering the raw and loose edges and concealing and pocketing the raw edges and loose threads of the bosom and two lines of stitching, one of which secures the binding to the shirt bosom and the second securing the bosom to the shirt body. In addition to the elements as described, a second and supplemental binding surrounds the two upper layers of the bosom and is secured thereto by a line of stitching, and such upper layers of the bosom are secured to the third and lower layer by another line of stitching. In the exhibit I have marked the body of the shirt as A, the lower layer of the bosom B, and the two upper layers of the bosom C and D respectively, the binding which secures the bosom to the shirt body as E, and the line of stitching which secures the shirt bosom to the shirt body as O, and the line of stitching which secures the two upper layers of the bosom to the bottom layer as F. It will be observed that neither the line of stitching which secures the binding to the two upper layers of the bosom, or the line of stitching which secures the two upper layers of the bosom to the third or lower layer of the bosom, passed through the body of the shirt, and that the bosom as a whole, namely, the three layers, is secured to the body of the shirt by the line of stitching O, which passes through the outer edge of the binding, and also by the outer edges of the bosom being secured in the seams of the sleeves and shoulders; the third or lower layer of the bosom is somewhat larger and differently shaped from that shown in the Cluett patent, but it is in all respects similar in function. I am clearly of the opinion that the change in size and shape of the lower layer of the bosom is merely a question of degree; it performs the same office in exactly the same way, is secured to the shirt in the same manner, and I consider the
34 arrangement of parts shown being an evident attempt to avoid the construction shown in complainants' patent, and is in all essential particulars an equivalent therefor. The additional binding and rows of stitching may be considered purely supplemental and additional elements.

Q. 6. In stating the objects of the invention in your last answer in the fifth clause you refer to the strengthening of the point of at-

tachment between the bosom and the shirt body. Please explain the object of increasing the strength of the parts at that point and make use of any shirt in your possession in making the explanation.

A. Prior to the date of complainants' patent the method commonly employed to secure a bosom to a shirt body was to insert the edge of the shirt body between the layers of the bosom, securing the whole by a line of stitching passing through the outer and folded edges of the layers of the shirt bosom and the included shirt body. The edge of the shirt body, which was inserted between the two layers of the bosom, was preserved flat, and it frequently happened, in the process of manufacture, that the line of stitching which passed through the layers of the bosom and the shirt body but barely caught the included layer of the shirt body; in other words, but very little of the material of the shirt body was within the line of stitching; as a result, any strain would tear the body from the bosom by giving way of the edge of the body; and, further, the outer layer of the bosom being of linen and adapted to be stiffly starched and the outer edge of the bosom turned inward at the junction with the shirt body, the edge of the bosom formed a sharp and cutting edge, this difficulty being increased with each subsequent laundering of the article, it will be readily understood, with the shirt in use and on the body of the wearer, the bosom stiff and the body semi-flexible, that the body was constantly rubbed or pushed over the sharp cutting edge of the bosom. The device described in complainants' patent shows a bosom with a thickened edge, thickened by reason of the folded edges of the bosom of the shirt body, of the bosom and shirt body, or of the bosom and the binding, or of the bosom, the shirt body, and the binding. The thickened edges absorb the starch, and no amount of subsequent ironing would be likely to produce a cutting edge around the bosom. The strengthening is further assisted by the relation of the parts, and any strain to which the article is subjected will be borne by several thicknesses of material instead of one, as in the case described.

Witness offers in evidence a shirt showing the construction and method of manufacture as previously employed and in use prior to complainants' invention.

The same is marked Complainants' Exhibit Benjamin's Shirt No. 1, E. S. B., N. P.

Q. 7. Please explain the object or function of the additional piece found at the edge of the bosom in the Exhibit Benjamin Shirt No. 1.

A. I understand the question to refer to the portion of material surrounding the bosom, placed under the shirt body, and secured to the bosom by its inner edge and to the shirt body by its outer edge. This piece forms what is known in the trade as a reinforce, a strengthening piece, and I understand its object to be to strengthen the attachment of the shirt body to the bosom. In the exhibit, at the point marked A at the back of the bosom, I have separated at one edge and cut out the reinforce so as to show the single layer of

the shirt body as attached to the bosom, and to show how
36 weak such a junction between the parts is or will become with slight use.

Q. 8. In describing the office of the "third element, a binding," you mention "pocketing or covering of the raw edges and loose threads of the bosom or bosom and shirt body." Will you please explain the function of pocketing referred to, using any model you may have for purposes of illustration?

A. Referring to Complainants' Exhibit Benjamin Shirt No. 1, at the point marked B on the front of the bosom of said exhibit I have separated the line of stitches which connects the bosom to the shirt body. It will be seen that the edge of the shirt body is left free between the layers of the shirt bosom. By free I mean that the edge of the shirt body is not folded, turned upon itself or included; that the loose threads of the edge are free and uncontrolled. By holding the exhibit between the observer and the light these loose and free threads can be seen all around the edge of the shirt bosom and between the two layers of the bosom. With the device in use this condition becomes aggravated; the process of laundering tends to further separate these threads, and which, so to speak, run together so as to form knots which readily absorb starch and which render it quite impossible to produce a smooth and even finish on the surface of the shirt bosom. I understand the office of the "third element, the binding," to be to include such raw edges and loose threads, and to limit their position to the edge of the shirt bosom, thereby rendering these very loose threads, which in the first instance were objectionable, a benefit by causing them to increase the thickness of the edge of the bosom to serve the purpose set forth in my answer to question 7.

Q. 9. The Cluett patent here in question refers to the binding as "cut bias, diagonally, or straight from the piece, so as to turn
37 the curves of the bosom." Please explain the action of the bias-cut binding in the connection referred to and compare it with that of the straight-cut binding.

A. By a straight-cut binding I understand a portion of material in which the threads run parallel and longitudinal; by a bias binding, in which the threads are parallel and run diagonally across the binding, the practical effect of which is that a straight binding will not stretch, while a bias binding has considerable elasticity. In applying a straight binding to a curved bosom and in turning the curve the binding has to be folded upon itself. It cannot be run on smoothly, and I am not aware of any mechanical binder which will apply such a binding to a curved shirt bosom, whereas in the case of a bias binding the elasticity of the binding is such that it readily follows the edge of the bosom without doubling upon itself and can be readily applied by all of the mechanical binders now in use by the trade. The shirt bosom bound by the bias binding presents a smooth, even edge.

Counsel for complainants offers in evidence the two strips of cloth, one cut straight and the other cut bias, and the same are marked as follows:

Complainants' Exhibit Straight Binding Strip, E. S. B., N. P., and and Complainants' Exhibit Bias Binding Strip, E. S. B., N. P.

Complainants' counsel also offers in evidence the shirt used by the witness in connection with his several foregoing answers, and the same is marked Complainants' Exhibit Benjamin Shirt No. 1., E. S. B., N. P.

38 Q. 10. What experience, if any, have you had in connection with laundering establishments and machinery?

A. I am generally familiar with the majority of the laundering machinery in use at the present day and which has been used by the trade. I have been consulted as to the best forms of machinery for use and have submitted plans and have superintended the construction of laundries, one of which plans was adopted and erected at a large shirt-manufacturing establishment at Bordentown, New Jersey. I am generally familiar with the process of laundering shirts by hand and machinery, and have been consulted in relation to machinery for shirt ironing and finishing.

Direct examination closed.

Cross-examination:

X Q. 11. What other methods to secure a bosom to a shirt body, other than the method described by you in answer 6, were employed prior to the date of complainants' patent?

A. The method described by me in answer to question 6 is the method which was commonly employed, as shown by the state of the art. My examination of the state of the art, made with a view to instructing myself relative to the methods employed prior to complainants' invention, does not show any other method or methods which differ materially from that described in my answer.

X Q. 12. Then if there were other methods employed you are not familiar with them?

A. My answer has been based upon the state of the art. If other methods were in use they are not shown therein and I am not familiar with them.

X Q. 13. In your last answer but one you indicate that there are methods with which you are familiar, but which, you
39 state, do not materially differ from the one employed in Benjamin shirt No. 1 and described by you. To what methods have you reference?

A. I have reference more particularly to folded or pleated bosom, square, or a plain bosom likewise square on its lower edge laid over a shirt body—that is, a shirt body with a continuous front, the edges af the bosom being first turned in and the whole secured over the body of the shirt.

X Q. 14. Is it not a fact that when the edges of the several layers of a bosom are turned in and under that this would prevent the raveling referred to in your previous answers?

A. No; I do not think—in fact, I know from personal experience that it does not. The process of washing and starching a bosom

tends to rub the layers of the bosom together and so increase the fraying or the straying of the threads of the selvedge edges.

X Q. 15. What harm would result to the bosom or the appearance of the bosom if the loose edges of a bosom in which the edges are turned in and under, as referred to in the last question, should unravel?

A. In answer to a previous question in the direct examination I stated that the threads tend to bunch up and absorb starch and to form rough spots, destroying the appearance and finish of the bosom.

X Q. 16. Supposing that this were so in a shirt bosom with the edges turned under, would not the appearance of these bunches of clotted starch be less visible in this kind of shirt than in the Benjamin shirt No. 1?

A. No; I don't see that it would make any difference. I understand the question to refer to a shirt bosom made of two or more layers. As a consequence, the outer edge of the outer layer of the bosom would come between the outer layer and the second layer, and consequently the loose threads of this layer of the bosom, as also the back layer of the bosom, would be in the position referred to. If anything, this arrangement would tend to aggravate the difficulty.

40

X Q. 17. At the date of the Cluett patent it was old to sew shirt bosoms to shirt bodies, was it not?

A. It was.

X Q. 18. Do you mean to be understood that it was new or that it was invention at the time of the Cluett patent to put a binding upon a shirt bosom?

A. Detached shirt bosoms had been bound previous to the date of complainants' patent, but I am not aware that a bound shirt bosom was applied to a shirt body and the parts so associated as to conceal all the raw or ragged edges of the shirt bosom or shirt body and shirt bosom.

X Q. 19. Can you conceive of a bosom bound with a strip of material in which the raw edges of the bosom would not be concealed?

A. That depends altogether upon how the binding was put on.

X Q. 20. I did not ask what it depended on; but, if you can conceive of such a bosom, please describe the same.

A. Witness does not consider that he is called upon to exert his inventive faculties. To oblige the counsel for the defendant he, however, will describe such a bosom. Given a flat shirt bosom, turn the edges in for a distance, say, of half an inch; given a binding having its edges folded and turned over the folded edge of the shirt bosom and that portion of the binding which comes under the edge of the shirt bosom one-quarter of an inch in width, as a consequence that portion of the shirt bosom which is turned under would extend towards the centre of the shirt bosom one-quarter of an inch further than the binding, and consequently would be free and exposed.

41

X Q. 21. Is it not a fact that you cannot conceive of a practical shirt-maker putting a binding upon a shirt bosom

in which the raw edges would not be concealed, and have you not in your last answer been obliged to exert your imaginative abilities to describe a thoroughly impractical shirt which even you, not being a shirt-maker, would not think of making were you called upon to make a shirt?

A. I have personally examined shirts made subsequent to the date of complainants' patent, which were made almost identical with the device described in my last answer, there being but a single difference, to wit, that portion of the binding which comes under the bosom was not folded on itself; as a consequence the raw edge of the binding was left exposed and free underneath the shirt bosom.

X Q. 22. But all of these devices have been made use of since the Cluett patent, and if the Cluett patent is good and valid are but colorable devices for the purpose of getting around the same. Is not that so? My question had reference to the date of the Cluett invention or prior to the same.

A. In answer to the first portion of this question, I am of the opinion that the various devices consisting of a shirt bosom, a shirt body, and a binding, where assembled and wherein the edges of the parts and loose threads were left free or partially pocketed, were palpable attempts to avoid the construction or intent of the invention described in the Cluett patent. The second portion of the question is not definite and cannot be answered.

X Q. 23. Then you admit that the shirt described by you in which the edges of the bosom are turned under about half an inch is an impractical shirt, and even if there are shirts made similar to the one described by you, if it were not for the Cluett patent no one would think of making that kind of a shirt?

A. I do not admit the premises. I have not construed the
42 Cluett patent to cover shirt bosoms or the combination of a shirt bosom and shirt body and a binding to be for the whole where the loose threads and edges are free, and in answer to my previous question I had in view a shirt bosom where the edges or loose threads of the shirt bosom or shirt body were in effect concealed.

X Q. 24. Referring to your previous answer, and especially to that part which says, "I have not construed the Cluett patent," &c., "to be for the whole where the loose threads and edges are free," do you mean to be understood that in the Cluett patent the binding under the several layers of the bosom must be turned in?

A. I do not construe the Cluett patent to describe a binding which necessarily must be turned under. The office of the binding is to include certain of the edges, but not necessarily the whole. The conjunction of the binding and the shirt body may in effect include the others.

X Q. 25. Then shirts could be made under the Cluett patent in which the edges of the bosom layers could unravel and absorb the starch?

A. I have not so stated.

X Q. 26. What have you stated?

A. My answers referred to a shirt with a laid-on bosom of two or

more layers and a binding wherein the outer edge of the binding was folded and turned over the layers of the bosom and between the bosom and the shirt body; the bosom secured to the shirt body by one or more lines of stitching, the second line of stitching passing through the shirt bosom and shirt body; or, supposing a line of stitching to be at the outer edge of the bosom, the free edge of the binding between the bosom and shirt body would be practically included between the two lines of stitching, and thus in effect limited to its position and thereby prevented from straying across the front of the bosom.

X Q. 27. At the date of the Cluett patent how were bosoms bound?

43 A. Detached bosoms or dickies entirely separated from the shirt were bound with a strip of material folded on their outer edge and stitched to the bosom by a line of stitching passing through the inner edge of the outer fold of the binding, the bosom, and the under edge of the binding.

X Q. 28. In such detached bosoms or dickies bound as described the different layers of the bosom—that is, the edges—were concealed and the unraveling of the same was prevented or concealed, was it not?

A. It was.

X Q. 29. Will you please make a diagram of these detached bound bosoms or dickies in use before the date of the Cluett patent?

A. I have made such a diagram, in elevation and in section, of a bound bosom which I had in mind in making my former answers. I have, however, no personal knowledge nor am I aware that the state of the art prior to the Cluett patent reveals any such device.

The same is marked for identification Benjamin Detached Bosom, E. S. B., N. P.

X Q. 30. How wide was the binding shown on this bosom?

A. Varying in width—depending on the taste of the maker—from a quarter to half an inch.

X Q. 31. Given this detached bosom or dicky, bound as described by you and in use before the date of the Cluett patent, how would you sew the same upon a shirt body?

A. The question implies a knowledge on my part of what I would have done in 1874, and it is very possible that at that time, even supposing that such a bosom had existed, that it would never have occurred to me to sew it on at all.

44 X Q. 32. But if you had been retained as an expert and received a liberal compensation and were given this bound dicky with the request to sew the same or suggest a method of sewing the same upon a shirt body, what would you have suggested and where would you have placed the stitch? I refer to the time or date of the Cluett patent.

A. My opinion at the present date, 1886, after having made a careful examination of all the patents relating to shirts granted since the date of the Cluett patent, undoubtedly has the effect to

prejudice my judgment at the present date. What I would do if I had not the knowledge I now have it is quite impossible for me to say.

X Q. 33. Would not the most natural way of sewing such a detached bosom or dicky upon a shirt body be by putting a second row of stitches through the binding onto the body of the shirt? To that I would like an answer yes or no.

A. Witness is unable to answer yes or no to the question, as he is unable to decipher the process of reasoning upon which the question is based.

X Q. 34. The process of reasoning has very little to do with the question of how you would sew a dicky described and drawn by you to a shirt body. Leaving out of the question the time and taking your present knowledge of the art into consideration, I ask you how you would sew such a bosom upon a shirt body, and whether you can suggest any conceivable and other practical way of sewing such a dicky upon a shirt body than by a second stitch through the binding.

A. If I were called upon to attach a bosom to a shirt body I should want to know the object it was intended to accomplish by so sewing such a bosom to the shirt body. If the counsel for the defendants will specify the kind of shirt body he has reference to I will endeavor to answer the question.

X Q. 35. I repeat my question and ask whether you can conceive to-day of any other practical way of sewing that dicky upon a shirt body than by a second row of stitches through the binding.

A. Yes; I can conceive several. A line of stitches could be so arranged as to pass through the bosom and shirt body within the binding—not touch the binding; second, a line of stitches passing down the centre of the bosom.

X Q. 36. Supposing the binding of the dicky referred to were a half an inch, can you conceive of any other way of fastening such a dicky to the shirt body except by a second line of stitches through the binding?

A. I can. Given a shirt with a bound bosom, the width of the binding being immaterial, it being simply a question of degree, such bosom could be attached to the shirt body by a line of stitching passing through the bosom and the shirt body and within the line of stitching which secures the binding to the bosom, and substantially as shown in Complainants' Exhibit Defendants' Shirt, which I have examined.

X Q 37. Taking your last answer into consideration, and if at the time of the Cluett patent it was not new to stick on dickies, as described by you, on a shirt body with a stitch inside of or away from the binding, would it have been new to have attached a shirt bosom to the shirt body as shown and described in the Cluett patent?

A. I have construed the Cluett patent to be for the article as a whole, a completed shirt, in which the edges and loose threads of the bosom or bosom and shirt body were pocketed or, in effect, included. I am not aware of any shirt made prior to the complainants'

patent arranged as described in the question, to wit, a shirt body and a shirt bosom provided with a binding. The Cluett patent is the first in the state of the art that I am aware of which shows a bound bosom attached to a shirt body in any manner—that is, wherein the shirt is adapted to be laundried to be finished.

46 X Q. 38. I repeat former question, with the additional statement that it is a hypothetical question; that it does not assume that at the time of the Cluett patent it was not new to stitch bound bosoms upon shirt bodies with the stitch inside of the binding; but, assuming that it was not new, whether it would have been new at the time of the Cluett patent to have attached a shirt bosom to the shirt body as shown and described in the Cluett patent? I do not mean to imply that you have testified at any time that bound dickies or bound-bosom shirts were sewed upon shirt bodies. The dicky referred to in my previous question is a detached bosom marked Benjamin Detached Bosom, for identification, E. S. B., N. P.

Question objected to on the ground that is capable of more than one interpretation, and, further, for the reason that it does not specify as to the arrangement or disposition of the material composing the shirt body or of the material composing the shirt bosom; and counsel for complainants suggests that for the sake of clearness and certainty counsel for defendants submit to the witness either the model of a shirt in regard to which he would inquire or a sketch representing the relations of the parts completely as to which he desires to be informed, in order to prevent ambiguity and consequent misunderstanding.

A. Supposing that it was not new to attach a dicky such as I have drawn to a shirt body, I am clearly of the opinion that it would have been new to attach a bound bosom by the methods described in complainants' patent. My reasons for this opinion are

47 that the complainants' patent describes three several modes in which a bosom can be attached to a shirt body, in each of which the intent of the mode and the disposition of the several parts had an effect to and was for the purpose of not only securing the bosom to the shirt body, but also including or practically concealing the raw or selvedge edges and loose threads. I do not see that the arrangement suggested in the question, taking the dicky as drawn by me, would have in effect produced the same result—that is, the completed article in its entirety would have differed in a measure from the completed article in complainants' patent.

X Q. 39. Supposing that prior to the date of the Cluett patent bound dickies similar to the one drawn by you had been sewed to shirt bodies, and the seam attaching the dicky to the shirt body had been inside of the binding, would it have been new or invention at the date of the Cluett patent to sew a bound dicky similar to the one drawn by you upon a shirt body, the seam attaching the dicky to the shirt body being on the binding, the construction referred to resembling figure 3 of the Cluett patent, the dicky being represented by the bosom in figure 3?

A. The arrangement decribed in the question differs from that shown in figure 3 of complainants' patent. I am of the opinion that it would have been new to have attached the bosom to a shirt body in the manner shown and described in complainants' patent. My reason for this opinion is that the line of stitching shown in figure 3 of complainants' patent does more than merely attach the bosom to the shirt body. In other words, it secures the bosom and at the same time includes the raw and selvedge edges of the several parts.

X Q. 40. Former question repeated, with the request to answer the same with a yes or no. The point whether the binding *or* in the dicky in figure 3 covers a raw or selvedge edges, or whether
48 the dicky or bound bosom shown in figure 3 was round or square or consisted of several layers of material or one, may, for the purpose of the question, be entirely left out of consideration.

A. I am of the opinion that there was clearly invention, and would answer the question by yes without reservation.

X Q. 41. Then I understand you to say clearly and without reservation that, if at the date of the Cluett patent bound dickies were sewed to shirt bodies, the stitch sewing the bound dicky to the shirt body being inside of and not on the binding, it would have, nevertheless, been new and required invention to sew a bound dicky upon a shirt body, the seam sewing the dicky to the body being on the binding? Please answer the question by yes or no; and if I have misunderstood you please confine yourself to pointing out in what respect, and do not answer the balance of the question for the present.

A. Counsel for the defendants seems not to have understood my answers to the foregoing questions. I have stated decidedly that it was my opinion that the method of attaching a bound bosom to a shirt body by a line of stitching passing through the binding was new and did require invention, providing such line of stitching performed a new office and produced a new result, not shown in the arrangement supposed in the question.

X Q. 42. Will you please point out what you mean in your last answer that counsel for defendant seems not to have understood your foregoing answers? And point out specifically in what respects this failure on his part relates to.

A. Counsel for defendants has asked me whether I considered it invention to attach the bosom to the shirt body by a line of stitching differently placed from that supposed in his hypothetical question. I have endeavored to answer the question in my pre-
49 vious answer, which I repeat: That if the line of stitching, by being differently placed, produce a new result, thereby making a better article, that there is no question as to the invention. I don't see how I can answer the question any more plainly.

X Q. 43. Referring to the detached bosom marked Benjamin Detached Bosom, for identification, E. S. B., N. P., what did the binding there shown cover?

A. The binding shown in the sketch by me covered the edges of the two layers of bosom.

X Q. 44. Now, supposing that the dicky referred to in your former answer had been sewed upon a shirt body by a stitch inside and not on the binding prior to the date of the Cluett patent, would it have been invention or new to have sewed such a dicky upon a shirt body by a separate line of stitching running through the binding?

A. It would have been new, for the reason that such a line of stitching running through the binding would have produced a new result.

X Q. 45. Were the raw and selvedge edges in the Benjamin detached bosom pocketed and covered by the binding so as to prevent their unraveling?

A. The edges of the bosom were covered and pocketed by the binding, and consequently would have prevented unraveling.

X Q. 46. Now, then, will you tell us what you mean in your last answer but one when you state that such line of stitching running through the binding would have produced a new result? Please explain the new result.

A. I have made a sketch showing two views, marked figures 1 and 2, horizontal sections through a shirt bosom and a shirt body. Referring to figure 1, *a a* represent the two layers of the bosom and *b* the shirt body and *c* the binding; *d*, the first line of stitching, secures the binding to the bosom, and *f* the line of stitching
50 which secures the bosom of the shirt body, this being the arrangement supposed in the hypothetical question. It will be observed that the binding which covers the edge of the bosom is folded at its upper edge, marked *h*, and is left free on its lower edge, marked *g*; consequently the line of stitching *f* which passes through the bosom and the shirt body does not include the point *g* of the binding, which is consequently left free and in a position to unravel. The selvedge edge, in other words, is not pocketed. Referring to figure 2, the same letters indicate the same parts. It will be observed that the point *g* of the binding is included by the line of stitching *f*, which passes through the binding, the bosom, and the shirt body, thereby in effect pocketing or concealing the raw and selvedge *g*.

The sketches made by witness are marked Benjamin Detached Bosom and body No. 2, for identification, E. S. B., N. P.

X Q. 47. You know the meaning of the term shop device, do you?

A. I do.

X Q. 48. Undoubtedly you are familiar with a large number of shop devices?

A. I am.

X Q. 49. Now, do you really mean to be understood as saying that if at the date of the Cluett patent it was old to sew shirt bosoms to shirt bodies, and it was also old to bind shirt bosoms, detached bosoms, or dickies with a binding covering the raw or selvedged edges of the different layers of the bound bosom or dicky, that it

was more than the commonest and simplest kind of a shop device to sew a bound bosom in any form upon a shirt body by a
51 separate line of stitching through such binding? Please answer this question by yes or no.

Counsel for the complainants objects to the question on the ground of ambiguity.

A. I am of the opinion that it was more than a shop device to make the change suggested in the question, and I arrive at this opinion from the fact that the prior state of the art prior to the Cluett patent does not disclose any such arrangement, and, further, that the arrangement as suggested has been extensively copied by the entire trade. I think there is nothing so true in the whole history of invention as that arrangements which seem most evident after having been seen are the least likely to be put in practice and remain the longest undiscovered.

X Q. 50. When did the manufacture of shirts in large quantities in factories begin?

A. I am not positive as to dates.

X Q. 51. Wasn't it about 1870?

A. From 1870 to '72, somewhere.

X Q. 52. Before 1870 or '72 the wholesale manufacture of shirts in large quantities was comparatively unknown and small establishments fitted customers and made a dozen or more shirts for each customer. Is not that so?

A. I don't know anything about it. I have no recollection as to dates in the matter. Shirt factories may have been in existence in 1850. All I remember, my attention was first called to the matter in 1870 or 1872.

X Q. 53. Before open-back-laundered-completed shirts came into common use what kind of white shirts were in use?

A. I have no personal knowledge in the matter, as open-back shirts came into use when I was very young.

52 X Q. 54. Isn't it a fact that on or about the years '68, '69, and '70, '71 open-back white laundered shirts first came into common use?

A. I am only able to answer the question by hearsay. I believe that the dates stated are in all probability correct.

X Q. 55. Please describe to us flannel-bosom shirts in use at or about the time of the Cluett invention.

A. An article of wearing apparel made of flannel shaped as a shirt was in use at the date of complainants' patent. It was made of soft, flexible flannel, and consisted of a back, a front, yoke, collar, sleeves, and cuffs, open in front, I believe.

X Q. 56. Describe the bosom.

A. The bosom was integral, with the front all of one piece.

X Q. 57. Please describe the ruffle-bosom shirts in use prior to the Cluett invention.

Question objected to as incompetent on cross-examination, and if the counsel for defendants desires to test the knowledge of the wit-

ness he is requested to submit a model or sample of the shirt of which he inquires.

A. I understand that a shirt was made consisting of a shirt body with a cut-out front, and a shirt bosom formed of a single layer of linen separated into a number of ruffles, the ruffling running vertically or horizontally with the shirt bosom. I have also seen shirts where the bosom was divided into a number of parts, each part enclosing a ruffle—an open-front shirt—and the ruffling attached to the body of the bosom by stitching in any suitable manner.

Recess.

53 X Q. 58. These shirts described by you were bound, were they not?

A. I have no personal knowledge to that effect.

X Q. 59. Please tell us what other devices of attaching shirt bosoms to shirt bodies besides the one shown in Benjamin shirt No. 1 were in use prior to the date of the Cluett patent?

A. Folded or pleated bosoms were in use prior to the date of complainants' patent, and in some instances were sewn over the shirt body—that is, the edge of the bosom turned in and a line of stitching passing along the edge of the bosom and through the shirt body, this form in contradistinction to the form described by me and shown in Benjamin shirt No. 1.

X Q. 60. Are you familiar with other devices besides those mentioned by you?

A. Two forms described by me are those which I understand to have been generally in use prior to the date of complainants' patent, and are all which in the prior state of the art have any bearing in regard to the question in controversy.

X Q. 62. Please make a diagram of the two varieties of shirts referred to in your previous answer, showing the different styles of attaching shirt bosoms to bodies prior to the Cluett patent.

A. I have made such diagram showing two horizontal sections, figure 1 showing a shirt body with an open or cut-out front and a bosom formed of two layers, B B, having their edges turned in and so arranged as regards the body of the shirt that the edge of the shirt body lies between the plies of the bosom, and free, the whole adapted to be connected together by means of the line of stitching D. This shirt opens at the back. Figure 2 shows a shirt body, S, with a single bosom—that is, one of a single layer—applied over the shirt body, a pleated bosom, the edges of which are turned in and left free and the bosom attached to the shirt body by the line
54 of stitches D. The letter C indicates the pleats of the bosom. This is an open-front shirt.

The drawing is marked Benjamin Exhibit R, for identification, E. S. B., N. P.

X Q. 63. In view of your former testimony, I presume that your opinion is that the raw edges of the bosom shown in figure 1 and figure 2 would unravel?

A. In the subsequent process of laundering, the raw edges would undoubtedly unravel.

X Q. 64. Please look at Defendants' Exhibit Salmon Patent, December 23, 1885, L. T., N. P., and state in what way you find the bosom attached to the shirt body.

Question objected to as incompetent on the ground that the patent is the best evidence of the fact called for.

A. I have examined the patent referred to in the question and I find a shirt body and a shirt bosom, the bosom being below the lever of the shirt body; the edges of the shirt body appear to be turned in and under, and the bosom is connected to the shirt by two lines of stitching passing through the shirt body and shirt bosom, thus leaving the raw and selvedge edges of both the bosom and the shirt body free on the under side of the shirt.

X. Q. 65. This patent is prior to the date of the Cluett patent, is it not?

A. Yes.

X Q. 66. It is a different device than either of the two shown by you in Benjamin Exhibit R, is it not?

A. It is.

55 X Q. 67. Now, inasmuch as your investigation of the state of the art is based mainly, if not altogether, upon an examination of patents obtained prior to the Cluett patent and you have failed to point out this mode of attachment, is it not possible that there were hundreds of different modes of attachment, so-called shop devices, in vogue and in use in the manufacture of shirts long prior to this Cluett patent, but which the alleged inventors of these devices did not patent, and with which, therefore, you would not be familiar?

A. It is impossible for me to state what shop devices existed prior to the date of complainants' patent, neither is it reasonable to expect that I should be fully conversant with all the details of the large number of patents relating to shirts and preceding that of complainants. My attention has been directed to patents which bear in some detail or part upon complainants' device, and as the last patent, namely, that of Salmon, by me described does not, in my opinion, have any bearing upon that of complainants, I have not paid any especial attention to it, and therefore did not include it among the methods for attaching shirt bosoms which had come into general use.

X Q. 68. Do you deliberately call that part of the layer B in Complainants' Exhibit Defendants' Shirt between the binding E and the binding including layers C and D a part of the bosom in the same sense that a bosom is shown and described in the Cluett patent and numbers of other shirt patents?

The last clause in the foregoing question objected to as indefinite.

A. I most certainly do. The portion B serves as the back layer of the bosom. It is likewise the medium through which a line of

56 stitching passes to connect the bosom as a whole to the shirt body. It therefore has all the functions substantially and identically the same as the back layer of the bosom described in the Cluett device. Claim 1 of the Cluett patent neither defines the style, shape, or size of the shirt bosom or of the layers of the shirt bosom. That the layer B has any additional function to that of acting as the back layer is, in my opinion, absolutely immaterial. In regard to the latter portion of the question I can make no definite reply. All sizes, shapes, and conditions of bosoms have been made, and I cannot answer more definitely without specific references.

X Q. 69. Can you show in any one of the several hundred shirt patents which complainants' counsel has here present in a bound volume where a part similar to the portion B referred to in the previous question is called bosom or part of a bosom?

A. The state of the art shows a great variety of bosoms, such, for instance, as patent No. 65596, G. B. Perkins; No. 135,424, O. Gowing; No. 135,478, C. W. Jenks; No. 136,771, J. A. Scriven; No. 142,212, T. M. Denham; No. 143,108, W. B. Watson; No. 146,972, I. Zacharias; No. 157,890, F. A. Tormey; No. 163,984, S. S. Fleishman; No. 215,442, T. M. and E. Denham; No. 219,284, I. H. Mambert; No. 253,483, F. C. Mott; No. 254,833, H. W. Messer. The above are all I am able to enumerate in rapidly running over the volume of patents. The last three patents cited relate more particularly to the question, the others being cited to show variation in bosoms.

Cross-examination closed.

57 Counsel for complainants here offers in evidence the letters patent No. 219,284 granted to I. H. Mambert September 2, 1879, and the same is marked Complainants' Exhibit Mambert Patent, E. S. B., N. P., and he also gives notice under the statute that at the hearing he will refer to and read the Mambert patent above mentioned as found in the monthly volume printed and circulated by the Commissioner of Patents.

Redirect examination:

R. D. Q. 70. Did you have any particular shirt in mind in making your answer to X Q. 13? And, if yes, please point out the same.

A. I had in mind the construction of shirt and bosom shown and described in U. S. patent No. 153,367, dated July 31st, 1874, J. H. Myers, inventor. The method of turning in the edges of the external layer of the bosom before securing to the shirt body is practically the same as was commonly in use prior to date of complainants' patent.

R. D. Q. 71. In cross-question 35 you are asked if you could conceive of any other practical way of sewing a dicky upon a shirt bosom than by a second row of stitching through the binding. Has

any other method of securing such a dicky to a shirt body occurred to you since the last meeting? And, if so, please describe it.

Objected to as not a proper question on the redirect examination.

A. I said in answer to cross-question 35 that I could conceive of several, and I mentioned one method which could be used. I had in mind several others at the same time, one of which was to secure the bosom to the shirt body by stitching the upper edge of
58 the bosom—that is, the portion at the neck—to the shirt body at the neck, thus leaving the lower part of the bosom free from the shirt.

R. D. Q. 72. Referring to your answer to cross-question 46, what do you mean in describing figure 2, in the latter part of the answer, by the statement that the "point *g* of the binding is included," &c.?

A. Referring to my answer to cross-question 46, I stated that *g* referred to the free edge of the *building* arranged under the layers of the shirt bosom—that is, if a bias or straight strip were used. Figures 1 and 2 of the drawing show the relation of this point *g* to the body of the shirt when the article is finished. Thus I described figure 1, the point *g* as external to the layers of the shirt body and not within the line of stitching *f;* in other words, free on the outside of the shirt and in a condition to unravel. In figure 2 I have shown the point *g* within the line of stitching *f*, and thus in practically the same position as would be occupied by the selvedge edges were the shirt formed in accordance with the method shown in Benjamin shirt No. 1, and by pocketing and concealing—as stated in the last line of my answer to cross-question 46—I had reference to pocketing and concealing as regards the external surface or part of the completed shirt in contradistinction to pocketing and concealing of the raw and selvedge edges so that such edges should not stray, as described by me in construing the Cluett patent. The edges *g* are pocketed, so far as the external surface of the shirt is concerned, but not so far as the shirt bosom and shirt body when combined are affected thereby.

R. D. Q. 73. The arrangement shown in the sketch Benjamin detached bosom and body No. 2, what is the structure shown—that of an ancient shirt, made prior to the patent, or a mere hypothetical shirt, which?

59 A. A purely hypothetical shirt, an arrangement supposed by the counsel for defendant.

R. D. Q. 74. Referring to your explanation of the "Exhibit Salmon Patent," will you please explain in detail the condition of the raw and selvedge edges of the bosom and shirt body?

A. Referring to figure 3 of the Salmon patent, which is stated to to be a horizontal section illustrating the manner of forming the seam for connecting the bosom to the shirt body, the shirt bosom appears in the drawing as but a single layer, and I do not find any statement in the specification that more than a single layer is used. The edges of this layer are left free and uncontrolled. The edges of the shirt body, which are turned under and over the shirt bosom, extend beyond the edges of the shirt bosom and are also free and

uncontrolled; as a result, the completed shirt would have a double selvedge edge free on the underpart of the shirt, in a condition to absorb starch, and probably be a source of irritation to the wearer.

Redirect examination closed.

Recross-examination:

R. X Q. 75. Referring to U. S. patent 153,367, July 31, 1874, J. H. Myers, figure 4, there are two rows of stitches through the bosom, uniting the bosom with the body, are there not?

A. I do not so understand the drawing. I find one row of stitching through the layers of the bosom—that is, the outer ply of the bosom is turned over the second layer and a line of stitching secures the two layers together, and a second line of stitching secures the bosom to the shirt body.

R. X Q. 76. Referring to Benjamin detached bosom and body No. 2, the unravelling of the loose edge of the binding at the point *g* would be prevented, would it not, if the lower part of the binding were turned in similar to the upper part of the binding at *h*?

A. It would prevent unravelling, and, if so formed, would be in effect identical with the device shown in the Cluett patent—practically the same thing.

R. X Q. 77. At the date of the Cluett patent it was, therefore, old to sew shirt bosoms to shirt bodies by two rows of stitching, one row of stitching uniting the two layers of the bosom, as shown in the Myers patent, and the other line of stitching uniting the two layers of the bosom to the shirt body?

A. It was old at the date of the Cluett patent to secure unbound bosoms to shirt bodies by two or more lines of stitching.

R. X Q. 78. It was also old at the date of the Cluett patent to bind a detached bosom or dicky with a strip of binding?

A. If counsel will explain what he means by a strip of binding I will answer the question.

R. X Q. 79. At the date of the Cluett patent it was old to bind two or more layers in a detached bosom or dicky with a strip of material, pocketing the loose or selvedge edges of the layers of the bosom, was it not?

A. The term "strip of material" is not definite. If the counsel will explain what he means by "strip of material" I will answer the question.

R. X Q. 80. (Question repeated, with the request to the witness to point out in what respect the question is uninteligible to him as an expert, in view of the previous examination.)

A. A strip of material may be a plain strip or it may be a bias strip. I prefer to make my answer definite, and I prefer the counsel to make his question specific.

Recross-examination closed.

61 Re-redirect examination:

R. R. D. Q. 81. In your answer to Q. 27 you use the expression "a strip of material folded on their outer edge and stitched to the bosom by a line of stitching." Will you please define what you mean by a strip of material?

A. I am not aware that dickies or detached bosoms were made prior to or at the date of the Cluett patent and provided with a binding made of a piece of material, either bias or straight. In answer to cross-question 27 I used the words "strip of material folded on the outer edge"—that is, the strip of material which bound the bosom folded on its outer edge; and in making this answer I had in mind cross-question 19, which asked me to conceive of such a bosom. My answer, therefore, to cross-question 27 was made under a misapprehension, and the drawing marked Benjamin Detached Bosom, E. S. B., N. P., having been made at the same time, must be viewed in the light of this correction. So far as I am personally aware and so far as the state of the art has disclosed, a tape or braid binding was the style of binding used prior and at the date of complainants' patent. Such a binding is shown at *c*, figures 1 and 2, of U. S. letters patent No. 156,155, dated October 20th, 1874, George E. Hall, inventor.

R. R. D. Q. 82. In answer to X Q. 36 you refer to a method of attaching the bosom to the shirt body by a line of stitching passing through the bosom and the shirt body and within the line of stitching which secures the binding to the bosom, and refer to the Complainants' Exhibit Defendants' Shirt. Please explain the meaning of the language quoted in that answer.

A. Referring to Complainants' Exhibit Defendants' Shirt, the line of stitching S is shown connecting the two upper layers of the bosom with the third or lower layer, producing what is
62 known as a fly-edge. The exhibit does not strictly show the construction unless we consider the third layer of the bosom as the equivalent of the shirt front. The resemblance is sufficiently near to explain what I meant.

Testimony of this witness closed.

GEORGE H. BENJAMIN.

Sworn to before me this 31st day of August, 1886.

[SEAL.] EDWARD S. BERRALL,
Notary Public, Kings Co.

Cert. filed N. Y. Co.

Adjourned subject to notice.

63 In the United States Circuit Court, Southern District of New York.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
vs.
JOHN MCNEANY, E. ELISHA MACK, and WM. M. TICKNOR.
} In Equity.

Testimony taken on the part of defendants, pursuant to stipulation herein and notice, in a parlor of the Fifth Avenue Hotel, on Fifth street, Troy, New York, on Wednesday, September 15, 1886, at 12 o'clock m.

Present: James A. Skilton, Esq., of counsel for complainants; Louis C. Raegener, Esq., of counsel for defendants.

ISAAC H. MAMBERT, a witness produced on the part of defendants, being duly sworn, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. Isaac H. Mambert; age, 43; 117 South Hawk, Albany; occupation, foreman of the factory of Mack & Company, the defendants.

Q. 2. In what industry have you been engaged during the last twenty years?

A. In the shirt and collar business continuously except about six months.

Q. 3. What positions did you occupy during that time?

A. I was cutter, manufacturer of goods myself, and am now superintendent of the shirt and collar department for Mack & Company.

64 Q. 4. Please look at Complainants' Exhibit Defendants' Shirt, E. S. B., N. P., and state what you find, and give a description of its several parts.

A. I find when I examine it that it is a round-bosom shirt, usually called shield-shaped, a two-ply bosom consisting of the layers C and D, the upper layer, D, being made of linen and the lower layer, C, of cotton. The bosom is sewed on the reinforcement B, the object of which is to strengthen the shirt and also gives weight to the shirt; also it saves wearing out where the suspenders strike across.

Q. 5. Complainants' expert has claimed that the reinforcement in part B was a part of the shirt bosom, and that the shirt bosom was connected to the shirt body by means of the line of stitches E and O. Do you agree with him? And, if not, please state your reason.

A. I do not. In the first place, if B was the bosom there would be no object in putting C and D onto it. C and D is the bosom proper, known so because it is pleated and stitched and attached to the shirt, and it is also known that a bosom is always ironed and starched with a heavy finish. The bosom is usually made of linen and cotton, the upper layer linen and the under cotton; also the interply of cotton where there is three-ply, and sometimes of linen. In this shirt the bosom proper is two-ply, the upper layer, D, being of

linen. C is what is known as beetle cotton. The outside of the bosom or reinforcement B we never starched, or rather not rub it, merely iron it, the same as we do the rest of the body of the shirt, where with the bosom we dip and rub to make it stiff and
65 give it a high finish. If B on this shirt was the bosom there would be no object to put on C and D; it would be an extra expense.

Direct examination closed.

Cross-examination by Mr. SKILTON:

X Q. 6. Please give the names of the firms with or by whom you have been employed in the shirt and collar industry.

A. Fields & White, collar manufacturers, of Troy. They were: George B. Cluett, Brothers & Company; Hermann, Aukam & Company, of New York; Coon, & Van Valkenburg; Sanford & Robinson; Corning & Company, now Corning & Barker. From there I went in business for myself. Then for six months I was in the express business, and then I went to Mack & Company, where I am now.

X Q. 7. Please state what years you were with these different concerns, in the order of the years.

A. In 1865 I was with Fields & White, and I think the same year with Cluett; then back again to Fields & White, same year, and I think the following year I went to Aukam's, and that same year—the following year—I went to Coon & Van Valkenburgh; with them, I was three or four years. I went from there to Sanford & Robinson—about 1870, I should judge—with them two years. During a year I worked at piece-work off and on for Gallop & Company. From there to Mr. Corning's. I was there four years. Went from Corning into business for myself, in the Centennial year or the year before. I remained in business for myself until some time in 1879; then I went into business again with Rankin & Company for about a year. All this was in Troy. Then I took the express business for six months—in that neighborhood; then I went to Mack & Company on the 3d of April, 1882. I have been there ever since.

66 X Q. 8. Are you the patentee of letters patent No. 219,284 of the United States, dated September 2, 1879?

A. I am.

X Q. —. Where were you employed, and how, when you applied for that patent?

A. Was in business for myself.

X Q. 10. What are the terms used in the trade or art to indicate the starched or bosom part of the laundered shirt?

A. It is the part of the bosom that is pleated and stitched. Before it is attached it is called a shirt front.

Recess till 1.30.

X Q. 11. Is not the industry of making shirt bosoms frequently a

separate manufacture distinct from the manufacture or making of other parts of the shirt?

A. It is.

X Q. 12. What are the articles so manufactured called?

A. Shirt fronts.

X Q. 13. Is this term "shirt fronts" applied in the trade to both set-on and to set-in bosoms—that is, to bosoms that are secured upon the shirt body as well as those that are secured in an opening or cut made in the shirt to receive them, or intended to be so secured?

A. Yes.

X Q. 14. Please examine Complainants' Exhibit Defendants' Shirt and point out and indicate by some mark that portion which constitutes the front part of the shirt body.

A. A and B both are a portion of the body.

X Q. 15. Is not the part "A," which extends underneath the part "B" as well as under the parts "C" and "D," the front part of the body proper of the shirt?

A. Part of the body of the shirt.

67 X Q. 16. Is not this part "A," since it is continuous from side to side and from the neck-band to the bottom of the front flap, the front part of the body proper of this Exhibit Defendants' Shirt?

A. It is a part of the front. B and A make the front body of this shirt.

X Q. 17. If the part "B" were absent in the defendants' shirt, and only the parts "A," "C," and "D" were left, then "A" would be the front body proper, would it not?

A. Yes, sir.

X Q. 18. Do you call the back ply of a set-on bosom a part of the body, or is it a part of the bosom proper?

A. Part of the bosom.

X Q. 19. Why do you call it a part of the bosom in that case, instead of a part of the body?

A. Because it is made separate and applied to the body afterwards.

X Q. 20. How are the parts in "defendant's shirt" marked "B," "C," and "D" made and applied? Are they not made first and applied afterwards?

A. They are.

X Q. 21. Then in that respect they are made and applied in the same way as the bosom with its back ply, as you have just described, are they not?

A. B, C, and D are made separate and applied afterwards.

X Q. 22. Then "B," "C," and "D" are made and applied in the same way that a bosom or front provided with a back ply is made and applied, is not that so—that is to say, in both instances the parts referred to are first made separately and afterwards applied or secured upon the front portion of the shirt body in the case of a set-on bosom shirt?

A. They are made separately and set on afterwards in both instances.

X Q. 23. Can you point out any differences between a set-on
68 bosom and this structure composed of the parts "B," "C," and "D," set onto the shirt body, except the greater width of the part "B" in this instance over the ordinary width of the back ply of a set-on bosom?

A. If B were part of the bosom it would be cut right off here at the edge of C and D and be made separately with the bosom.

X Q. 24. Well, it is made separately, this part "B," with the bosom, as you have already testified, is it not?

A. Yes.

X Q. 25. The parts "C" and "D" are secured to the part "B" before the combined parts are secured to the shirt body, are they not?

A. In this exhibit they are.

X Q. 26. And these, "B," "C," and "D," are secured together by a line of stitching as are the three parts of a three-ply bosom, consisting of a front layer of linen, an interlining or layer, and a back ply, are they not—that is, there is a line of stitching employed in each case to secure the three layers or plies of material together, is there not, before they are put on the shirt?

A. In this exhibit there is a line of stitching which secures the bosom to the reinforcement.

X Q. 27. And in this exhibit these three parts—the bosom and what you call the reinforce—are secured together by the line of stitching referred to in your last answer before the completed structure is secured to the front portion of the shirt?

A. Yes.

X Q. 28. When is the binding marked "E" in "defendants' shirt" applied to the edge of the part "B?" Is that done before parts "B," "C," and "D" are secured to the shirt body or afterward?

A. It is done before "C" and "D" are applied to "B."

69 X Q. 29. When is the part marked "E" on the edges of the part "C" and "D" applied?

A. After the center pleat or box pleat is pleated and stitched and before the line of stitching S is applied.

X Q. 30. When in the order of stitches is the outer line of stitches through the binding "E" applied?

A. It is the last.

X Q. 31. It is this last or outer line of stitching through the binding "E" that secures the lower part of the part "B" — well as of the part "C" and "D" to the shirt body, is it not?

A. The outer edge of the stitching of "E" secures the reinforcement to the body of the shirt; the lower parts, C and D, are fastened to B—sewed to B.

X Q. 32. Please point out any other line of stitching, except the outer line through the binding "E," through or by means of which parts—lower parts—of "C" and "D" are secured to the shirt body, if such there be.

A. The stitching on C and D is secured to the reinforcement B, and the stitching across the yoke also holds bosom.

X Q. 33. Are the lower parts of C and D opposite the binding E secured to the shirt body by any other line of stitching or held to the body by any other line of stitching except the outer line of stitching through the binding "E?"

A. Only with the stitching across the yoke, and the neck-band as well.

X Q. 34. In letters patent No. 219,284 I find the following language: "Instead of forming the shirt in two parts, as above described, the shirt front may be cut as usual and the part be applied in proper position over the upper part of the front of the shirt and stitched thereto, the brace in this case being formed by turning under the curved edge D and sewing it to the shirt front."

70 Will you please explain this language, in view of the interpretation you have given in your testimony herein of the parts "A," "B," "C," and "D" and the binding thereon?

A. Well, this section may be cut solid just as this is and the bosom laid on.

X Q. 35. What do you mean by "this section?"

A. This part marked B and this here B can be cut whole or it can be cut in sections.

X Q. 36. Is this all the answer you have to make to X Q. 34?

A. I don't know that I can explain it any clearer than that.

X Q. 37. What do you understand the language I have just quoted in X Q. 34 from the specification of your patent to mean?

A. I take it to mean that we can cut the shirt like this and lay the bosom on here.

X Q. 38. Do you understand that the language I have quoted from the specification of your patent describes a method of making a shirt like defendants' shirt?

A. No, sir; I do not.

X Q. 39. What does it describe, then, in comparison with defendants' shirt; or, in other words, how should the Exhibit Defendants' Shirt be altered to correspond to the description contained in the part already quoted?

A. Cut this section right apart. The language quoted in the question does not describe Complainants' Exhibit Defendants' Shirt.

X Q. 40. Then what does it describe? In your answer indicate what your reply is by comparing Complainants' Exhibit Defendants' Shirt with the shirt made according to that quotation.

A. The modified shirt described in the quoted language of the patent—the edge of B is turned down and under and sewed onto A and there is no other binding.

71 X Q. 41. According to which of the methods shown in these letters patent No. 219,284 is Complainants' Exhibit Defendants' Shirt made?

A. It is an imitation of figure 1 shown in said patent.

X Q. 42. In what respect is it an imitation, and what do you mean by "imitation?"

A. By binding the reinforcement in the same manner.

X Q. 43. What is the object of the part marked D in your patent?

A. It is a binding intended to strengthen the shirt, and also adds to the looks.

Cross-examination closed.

Redirect examination by Mr. RAEGENER:

R. D. Q. 44. The layers C and D are united together, are they not, before they are attached to B?

A. They are.

R. D. Q. 45. The wristbands are made separately, are they not, before they are attached to the shirt?

A. They are.

Redirect examination closed.

Recross-examination by Mr. SKILTON:

R. X Q. 46. By what means are the parts C and D attached together before they are attached to the part B, as you have just stated?

A. In this case the defendants' shirt, the bosom marked D and C, is secured together by the binding "E" before it is put on B.

R. X Q. 47. Do you still adhere to the order in which the different lines of stitches are made in defendants' shirt, as stated in your cross-examination, and have you correctly stated that order therein?

72 Question objected to as not proper cross-examination.

A. I have numbered the stitches in order, from 1 to 5, as they are made and as that exhibit is constructed.

R. X Q. 48. Please state what your duties are as employee of Mack & Company in connection with the manufacture of shirts like Complainants' Exhibit Defendants' Shirt.

A. General superintendent; give out work and inspect the same on its return.

R. X Q. 49 Are you familiar with the entire process or order of proceeding in the manufacture of shirts like Complainants' Exhibit Defendants' Shirt?

A. Yes, sir; I am.

ISAAC H. MAMBERT.

Sworn to before me this 15th day of September, 1886.

O. S. INGRAM,
Notary Public, Troy, N. Y.

Defendants here close their testimony in this case.

73 At a stated term of the circuit court of the United States of America in and for the southern district of New York, held

at the United States court-rooms, in the city of New York, on the 9th day of June, one thousand eight hundred and eighty-seven.

Present: Hon. Alfred C. Coxe, judge.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT, Complainants,
against
JOHN MCNEANY, EDWARD ELISHA MACK, & WILLIAM M. TICKNOR, Defendants.

This cause having come regularly on for final hearing on the bill of complaint and the answer and replication and on the
74 proofs taken on the part of the complainants in the presence of James A. Skilton, Esq., of counsel for complainants, and Louis C. Raegener, Esq., of counsel for defendants, and said James A. Skilton, Esq., having been heard on behalf of complainants and said Louis C. Raegener, Esq., having been heard on behalf of the defendants:

Now, therefore, upon consideration thereof and due deliberation had and upon motion of David Tim, solicitor for defendants, it is ordered, adjudged, and decreed that said bill of complaint be, and the same hereby is, dismissed with costs to the defendants, to be taxed by the clerk of this court.

(Signed) ALFRED C. COXE.

(Endorsed:) U. S. circuit court, southern district of N. Y. George B. Cluett & *al.*, complainants, against Edward E. Mack *et al.*, defendants. Final decree. David Tim, solicitor for def'ts, 25 Chambers St., N. Y. city. (File-mark:) U. S. circuit court. Filed June 10, 1887. Timothy Griffith, clerk.

75 Circuit Court of the United States, Southern District of New York.

GEORGE B. CLUETT & *als.*
vs.
JOHN MCNEANY & *als.*
In Equity.

It is hereby stipulated that the foregoing may constitute the record to be sent by the clerk of this court to the Supreme Court of the United States on the appeal to said Supreme Court in the above-entitled cause; and it is further stipulated that the exhibits in the cause may be retained in the possession of the clerk of this court until the hearing on appeal in said Supreme Court. The foregoing stipulation is made without prejudice to any motion to be hereafter made to corrrect said record, if any errors shall be found to be contained therein.

New York, October 7, 1887.

(S'g'd) JAMES A. SKILTON,
Sol'r and of Counsel for Complainants.

(S'g'd) DAVID TIM,
Sol'r for Def'ts.

(Endorsed:) Filed October 10, 1887.

75½ In the Circuit Court of the United States, Southern District of New York.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
vs.
JOHN MCNEANY, ED. ELISHA MACK, and WM. M. TICKNOR.
} In Equity.

On appeal to the United States Supreme Court.

It is hereby stipulated and agreed on behalf of, by, and between the parties hereto as follows:

1. That the testimony taken on behalf of complainants in the case of George B. Cluett *et al. vs.* Horace B. Claflin & *al.*, in this circuit, may be read and used at the hearing of the appeal herein as if taken and printed as a part of the record in this case, and with full force and effect as such.

2. That the testimony taken on behalf of defendants in the case of George B. Cluett & *al. vs.* Horace B. Claflin *et al.*, in this
75¾ case, and with full force and effect as such.

Dated New York, October 8, 1889.

(S'g'd) JAMES S. SKILTON,
Of Counsel with Compl'ts.

(S'g'd) DAVID TIM,
Sol'r for Def'ts.

(File-mark :) Filed October 10, 1887.

76 Circuit Court of the United States, Southern District of New York.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
vs.
JOHN MCNEANY, ED. ELISHA MACK, and WM. M. TICKNOR.
} In Equity. No. 3777.

To the Honorable Supreme Court of the United States:

The petition of George B. Cluett, J. W. Alfred Cluett, and Robert Cluett, complainants, respectfully showeth—

That on or about the 23rd day of March, 1886, the above-named complainants filed their bill in the circuit court of the United States for the southern district of New York against the above-named defendants; that it was alleged in said bill that the complainants were the owners of certain letters patent for new and useful improvements in shirts therein designated; that the defendants had infringed the said letters patent; and the bill prayed for an injunction enjoining the defendants from infringing the said
77 patented invention, and an account of the gains, profits, and damages arising from said infringement.

That on or about the 24th day of May, 1886, the defendants filed

an answer herein denying that they had infringed said letters patent, alleging that the same were invalid, and in other respects traversing the allegations of the said bill; that proofs on behalf of complainants and defendants were duly taken, and the cause was heard before his honor Judge Coxe at the February term, 1887, of said court, and on the 10th day of June, 1887, a final decree was entered herein whereby it was adjudged and decreed that the said bill be dismissed and that the defendants have judgment for their costs, and that judgment was duly entered in favor of defendants in the sum of one hundred and thirty-eight dollars and sixty-nine cents ($138.69) on the 21st day of June, 1887, and the same has not been satisfied.

Wherefore these complainants appeal from the whole of said decree of said circuit court, and respectfully pray that the said decree, the pleadings, proofs, and other proceedings, or such
78 part and so much thereof as may be agreed upon by the solicitors and counsel for the respective parties hereto, may be sent to the Supreme Court of the United States, and that said Supreme Court will proceed to hear the said cause anew, and that the decree of the circuit court and every part thereof may be reversed and such decree made as to said Supreme Court shall seem just, and that pending said decree the issue of execution herein may be stayed.

(S'g'd) JAMES A. SKILTON,
Solicitor and of Counsel for Complainants and Appellants.

Allowed by—
(S'g'd) ADDISON BROWN.

79 Supreme Court of the United States.

Circuit Court of the United States, Southern District of New York.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
vs.
JOHN MCNEANY, ED. ELISHA MACK, and WM. M. TICKNOR.
} In Equity. No. 3777.

Know all men by these presents that we, Henry G. Fisk and George F. Miller, both of the city, county, and State of New York, are held and firmly bound unto the above-named John McNeany, Ed. Elisha Mack, and Wm. M. Ticknor in the sum of two thousand dollars ($2,000); for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the first day of July, 1887.

80 The condition of this obligation is such that whereas the said John McNeany, Ed. Elisha Mack, and Wm. M. Ticknor have obtained a decree in the circuit court of the United States for the southern district of New York dismissing the bill of complaint

of the said George B. Cluett, J. W. Alfred Cluett, and Robert Cluett; and for costs, which said decree was entered on the 10th day of June, 1887; and whereas the said George B. Cluett, J. W. Alfred Cluett, and Robert Cluett, in order to obtain reversal of the same, have obtained the allowance of a petition of appeal to the Supreme Court of the United States:

Now, therefore, if the above-named George B. Cluett, J. W. Alfred Cluett and Robert Cluett shall prosecute their said appeal to effect and shall answer the amount of the judgment obtained by the defendants herein, with interest, and all damages and costs, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

(S'g'd) HENRY G. FISK. [L. S.]
GEORGE F. MILLER. [L. S.]

Executed and delivered in the presence of—
(S'g'd) EDWARD S. BERRALL.

81 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Henry G. Fisk and George F. Miller, the sureties above-named, being each severally duly sworn, does each for himself depose and say that each of them is a resident of the State of New York, and each is a householder, and is worth the sum of four thousand dollars ($4,000) over and above all debts, dues, and demands and incumbrances whatever, besides property exempt by law from execution.

(S'g'd) HENRY G. FISK.
GEORGE F. MILLER.

Sworn to before me this first day of July, 1887.
(S'g'd) EDWARD S. BERRALL,
[NOTARIAL SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

82 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I hereby certify that on this first day of July, 1887, before me personally came Henry G. Fisk and George F. Miller, each of whom is personally known and is known to me to be one of the individuals described in and who executed the within bond, and they each severally acknowledged that they executed the same.

(S'g'd) EDWARD S. BERRALL,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

Approved July 1, 1887.
(S'g'd) ADDISON BROWN,
U. S. Dist. Judge.

UNITED STATES OF AMERICA, *ss:*

To John McNeany, Ed. Elisha Mack, and Wm. M. Ticknor, Greeting:

Whereas George B. Cluett, J. W. Alfred Cluett, and Robert Cluett, in a suit in equity in the circuit court of the United States
83 for the southern district of New York, wherein they were complainants and you, the said John McNeany, Ed. Elisha Mack, and Wm. Ticknor, were defendants, have appealed to the Supreme Court of the United States from the final decree entered by said circuit court on the 10th day of June, 1887, and have filed the security required by law:

You are therefore hereby cited and admonished to be and appear before the said Supreme Court of the United States, to be held at the city of Washington on the second Monday of October, 1887, to show cause why the said decree should not be reversed and to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the first day of July, 1887.

(S'g'd) ADDISON BROWN,
U. S. Dist. Judge.

(Endorsed:) Circuit court of the United States, southern
84 district of New York. George B. Cluett, J. W. Alfred Cluett, and Robert Cluett *vs.* John McNeany, Ed. Elisha Mack, and Wm. M. Ticknor. Petition on appeal, bond, citation, &c. James A. Skilton, solicitor and of counsel for complainants and appellants, 115 Broadway, New York city.

(File-mark:) U. S. circuit court. Filed July 1, 1887. Timothy Griffith, clerk.

85 Circuit Court of the United States, Southern District of New York.

GEORGE B. CLUETT, J. W. ALFRED CLUETT, and ROBERT CLUETT
vs.
JOHN MCNEANY, ED. ELISHA MACK, and WM. M. TICKNOR.
} In Equity. No. 3777.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

EDWARD S. BERRALL, being duly sworn, saith that on the first day of July, 1887, at about 4 o'clock p. m., he served on the solicitor and counsel of the above-named appellees, David Tim, Esq., and Louis C. Raegener, Esq., a copy of the appeal and a copy of the citation filed in this cause with the clerk of the circuit in and for the southern district of New York, by delivering said copy of the citation and appeal to the said solicitor and to the said counsel personally, and by leaving a copy of the same for the said appellees in the circuit court clerk's office aforesaid.

86 (S'g'd) EDWARD S. BERRALL.

Sworn to this first day of July, 1887, before me—
(S'g'd) JOHN A. SHIELDS,
S. D. of N. Y.

(Endorsed:) Circuit court of the United States, southern district of New York. George B. Cluett & *als. vs.* John McNeany & *als.* Affidavit of service. James A. Skilton, sol'r and of counsel for compl'ts & app'l'ts, N. Y. city.

(File-mark:) U. S. circuit court. Filed July 1, 1887. Timothy Griffith, clerk.

87 UNITED STATES OF AMERICA, } *ss*:
Southern District of New York, }

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to eighty-six, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of George B. Cluett, J. W. Alfred Cluett, and Robert Cluett against John McNeany, Ed. Elisha Mack, and William M. Ticknor as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this tenth day of October, in the year of our Lord one thousand eight hundred and eighty-seven, and of the Independence of the said United States the one hundred and twelfth.

Seal of U. S. Circuit Court, South. Dist. New York.

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 175. George B. Cluett, J. W. Alfred Cluett, and Robert Cluett, appellants, *vs.* John McNeany, Ed. Elisha Mack, and William M. Ticknor. Filed October 11, 1887.

SUPREME COURT OF THE UNITED STATES.

FILED
APR 20 1891
JAMES H. McKENNEY
CLERK

OCTOBER TERM, 1890.

Nos. 174 and 175.

GEORGE B. CLUETT AND OTHERS, *Appellants,* *vs.* HORACE B. CLAFLIN AND OTHERS, *Appellees.*	IN EQUITY. No. 174.
GEORGE B. CLUETT AND OTHERS, *Appellants,* *vs.* JOHN McNEANY AND OTHERS, *Appellees.*	IN EQUITY. No. 175.

ANSWERING BRIEF FOR APPELLANTS.

J. A. SKILTON,
Attorney.

S. A. DUNCAN,
Of Counsel.

C. G. BURGOYNE, WALKER AND CENTRE STS., N. Y.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

Nos. 174 and 175.

George B. Cluett and others, Appellants, vs. Horace B. Claflin and others, Appellees.	In Equity. No. 174.
Same vs. John McNeany, E. E. Mack and W. M. Ticknor, Appellees.	In Equity. No. 175.

Answering Brief for Appellants.

This brief is filed pursuant to a stipulation of the parties, under which it has been agreed that the cases be submitted on briefs—the appellees having the right of reply to appellants' opening brief, and appellants having the right of reply to such brief of the appellees.

Most of the points made by appellees have been fully discussed in appellants' former brief. A few points only seem to demand further attention.

I.

The alleged anticipation at Chatham.

As to alleged anticipation by prior public use, defendants' counsel have chosen to confine themselves in their brief to three exhibits—the Exhibit A, the Clark Model and the McClellan Shirt, as each and all of them showing the combination of the Cluett patent. All of these exhibits relate to the alleged use at Chatham.

Appellants have already shown that the "folded binding" of the patent is not found in Exhibit A. The Clark Model, which illustrates only a bosom and a strip secured to its edge preliminarily and partially, and the McClellan Shirt show precisely the same unfolded strip (as to its lower edge), instead of the "folded binding" of the patent. Therefore, neither one of the three exhibits "exclusively" relied upon by defendants' counsel shows the combination of the Cluett patent.

But these three exhibits, even if the strip be held to be the "folded binding" of the patent, fail completely as exhibitions of the elements of the patent combined as in the patent.

The object of the patent is stated to be not only "to avoid the folding in of the edges of the bosom," but "to avoid * * * the raw edges and loose threads thereof, which disfigure the bosom when so folded in." It is true the edges of the bosoms in these three exhibits are not folded in, but "the raw edges and loose threads thereof" are not "avoided," but are still left in such relations to the binding, the bosom and the shirt body as to "disfigure the bosom," practically, to the same extent as if the edges of the bosom were folded in as in the old method.

Inspection of the Exhibit A and of the sketch of the same

accompanying appellants' former brief shows that the space between the layers of the bosom and the bottom layer representing the shirt body is one and continuous from the centre of the bosom to the fold in the binding strip on the top of the bosom near which it is first secured by a line of stitching to the bosom; and also that neither the preliminary line of stitching securing the plies of the bosom to each other, nor the outer line of stitching securing the same to the shirt-body, can prevent the loose threads from the raw edges of the bosom from escaping through the space between the bosom and the binding strip into the continuous space between the parts. In the process of washing and starching, these parts are displaced, moved and widely separated—relatively, in all directions and to the extreme extent permitted by the lines of stitching, which alone put a limit to such movements. The interspaces are more or less occupied at times by water and by starch, and the manipulations (sometimes the work is done by machinery) are extremely severe. It is evident that the changes of the relations of the parts may be such that the edges of the bosom, and also of both raw edges of the binding strip, may be presented from each side of the bosom toward the centre of the space between the bosom and the shirt body, as in the accompanying sketch made for purposes of illustration. And when these loose threads once so reach the interspace, it is evident they cannot be removed therefrom except by taking the shirt and bosom apart and putting them together again. In other words, the raw edges and loose threads are not pocketed by the binding strip of these three exhibits. It necessarily follows that, as these three exhibits do not contain the combination of the patent, nor accomplish its objects, they do not show anticipation.

The Clark model merely shows the bosom with the strip secured by the first line of stitching to its edge.

As to the McClellan Shirt, the testimony of Mr. McClellan shows that before he produced the exhibit he cut off portions of the body of the shirt, which he states were ragged and filthy.

An examination of what remains in and with the exhibit shows that the bosom and binding of which so much use has been made, were not the bosom and binding of the original shirt body of which they formed a part when found by Mr. McClellan in his garret. Whatever the facts of the case may be, the utter worthlessness of the exhibit is practically admitted by the appellees in their brief, in which they say, referring to the bosom of this exhibit, that it "was probably applied to a new shirt body." The stronger probability is that this bound bosom was put into the shirt after the original bosom was worn out. At all events, it seems to be admitted that the shirt body has been worn out, while the bosom still remains sound and strong in the material of which it is composed; in other words, it is precisely in the condition of a new bosom which has been inserted in an old shirt, and, as such, it is therefore worthless as an exhibit in this case for all purposes whatever.

In reply to the statement that McClellan positively fixes the date of his purchase of the McClellan Shirt as prior to 1870, appellants urge that the uncertainties of this witness as to shape and construction of the Ford shirts purchased by him, already alluded to in our brief, apply to this exhibit and attempted identification as well. They also urge that the witness broke down completely in the two and only particulars in and through which he attempted to fix the dates of this exhibit. He identifies this shirt by the fact that it had "a single hole made in it," in which he wore a peculiar kind of studs with a screw. But subsequently it appeared, and he admitted in the same answer, that it had "two such holes in it." The surprise and chagrin of the witness when he discovered, after completing his answer, that the exhibit had "two such holes" instead of a "single hole" could not be expressed in the record; but the record still shows that the means of identification utterly failed (p. 592). And, in fact, the last sentence of the answer is

a complete refutation of the first, as well as of the statement of the witness that this shirt was bought before 1870.

The "tab" incident is still more instructive and left the witness completely demoralized. He says his earlier purchases from Ford had no tab, while the later ones did have a tab, and therefore he identifies this exhibit as belonging to his earliest purchase from Ford—supposing it had had no tab on it. When his attention was called to the remains of a tab still attached to the exhibit, but which he had not discovered for himself, he confesses he is mistaken and that his "inference won't amount to much" (x-Q. 150, p. 592).

There are two irresistible conclusions to be drawn from this testimony. The witness, according to his own formula of "inference," was mistaken as to the date—1870—and the shirt, if made by Ford (it has his stamp, but Clark inherited his stamps), belongs among his later purchases, which had tabs, possibly was made by Clark after 1880, and, whenever made, has had a new bosom put on since its original manufacture, and consequently the date of the bosom cannot be now fixed.

These two incidents also throw a strong back light upon all his previous testimony and the various "inferences" as to facts and dates contained therein.

II.

Cluett Bound Dickie.

The Cluett bound dickie being made, sold and used before the date of the Cluett bound bosom shirt invention, the speculative opinions of experts and the surmises of defendants' counsel that the bound bosom shirt, or bound shirt bosom, required and shows no invention, is met by the facts, put in evidence by appellants, that Robert Cluett, who knew of the bound dickie, and as early as 1873 was striving to accomplish some or all of

the objects of this invention with the aid of a factory full of shirt makers, and was skilled in the art, did not discover in the bound dickie the means and combinations for which he was searching diligently; but between that date—1872—and the date of this invention made three other inventions and applications for patents, some of which were allowed, and only reached this invention after experiment, and aided by the experience and observation had in the manufacture, sale and use of these prior and intermediate inventions (pp. 37, 83-4, Robert Cluett File and Contents, February 17, 1873, Coffin Shaped Bosom Shirt; Robert Cluett Welt Patent 161,205, March 23, 1875; and Myers Patent 153,367, July 21, 1874).

Myers was a skilled shirt cutter and maker in the Cluett establishment, and he was also striving as an inventor to accomplish similar objects, as an inspection of his patent shows, and yet, with all the advantages of knowing of the bound dickie made by the concern for which he worked, he also failed to see in it even the germ of the bound bosom invention of the Cluett patent.

Defendants offer no evidence that any one, after seeing the bound dickie, either secured such a dickie to a shirt front or conceived the idea of doing so.

And appellants urge that these facts proven on their behalf outweigh reams of speculation on the subject.

In this connection it is significant that defendants' witness Sinzheimer, even when giving his testimony in December, 1885, says: "You cannot 'set in' a round bound bosom into a shirt" (p. 505).

As to the existence of woolen or like unlaundered shirts having any "folded binding" on the edges of the shields or chest protectors that are made by defendant's counsel to do duty as "bosoms," alleged to have been in existence prior to the date of this invention, the action of the firm of Hermann, Aukam & Co. is extremely significant. This Jewish house, sharp rivals of the Rothschild house, themselves applied in

December, 1874, within a month after the patent was issued, for a license under the patent, took and worked under a license for five years, making and selling bound bosoms *of all kinds* to be secured to shirt bodies by shirt makers in various parts of the country and in large quantities.

Hermann, Aukam & Co. not only had equal facilities with the witnesses for defendants in New York and Philadelphia for knowing of the prior existence of such shirts and bosoms, but they had detectives even in Rothschild's factory, and raked the country as far as Texas without ever finding a single specimen of such a shirt to present to the attorney of Cluetts as the basis for a suit for infringement, although repeatedly urged by him to obtain and deliver to him any such shirt they could discover.

Further, it is by no means certain that if defendants' witnesses ever saw such shirts anywhere, and are testifying truly, they did not see those made and sold by Herman, Aukam & Co. under their license and under this patent. As H. A. & Co. made and sold such bound bosoms throughout the country, it requires no forcing of probabilities to suppose that they are actually attempting to describe shirts made under the Cluett patent and the H. A. & Co. license, but are simply in error as to their dates.

III.

Finding of Circuit Court on the Prior State of the Art.

Appellees criticise appellants' opening brief on the alleged ground that it does not correctly represent the finding of the Court below in regard to the prior state of the art—in that it makes no mention of the fact that the Court found that laundered shirts with ruffled or puffed bound bosoms were well known.

It is true that the Court incidentally referred to the prior existence of shirts with ruffled and puffed bosoms. But it seems equally plain that the argument embodied in the opinion of the Court did not lay any emphasis upon such fact. Appellants' former brief dealt only with those facts which seem to have had a value in the mind of the Circuit Judge.

It is presumed that the reference of the Circuit Judge to puffed or ruffled bosom shirts was directed to the shirts testified about by the witnesses Borchardt, Ballin, Van Beuren, Fisk and Rothschild.

While Borchardt makes a sketch and Shirts X and Y, which he claims show how ruffled shirts were bound before 1874, and Ballin, testifying for defendants, calls the side pieces of ruffled bosom shirts of the period before 1874 " bindings," the latter, when called as a witness for appellants, admits that these so-called " bindings " consist of folds of linen composing integral parts of the shirt bosom, never less than half an inch wide and usually an inch and upwards in width, which he identifies as similar to the side pieces in Ballin Strips 1 and 3. Fisk, of Fisk, Clark & Flagg, produces an original shirt of that kind, the Fisk Ruffled Shirt, as a sample of the make of that time, and being shown Borchardt's Exhibits X and Y, says he does not think " shirts were ever made or sold this way," " made in this way with raw edges would certainly make it unsalable."

The appellants urged that no ruffled or puffed bosom shirts have been shown to have been made prior to 1874 in which the bosoms were secured to the shirt bodies by means of either a folded binding or any other binding.

Borchardt was an employee of Rothschild, and notwithstanding the statements made by Rothschild, as appears by the testimony of J. A. Skilton, Rothschild admitted and asserted in 1875 that he was not making any shirts with bound bosoms, and endeavored to secure a license under the Cluett patent.

Whether it be considered in relation to alleged anticipation

or in relation to the prior state of the art, it is urged by appellants that the puffed or ruffled bosoms have no bearing whatever on these cases.

IV.

Cases Cited by Appellees.

The various cases cited by the appellees in their brief, in support of their contention of the non-patentability of the invention of the patent in suit, add nothing to the argument embodied in the opinion of the Court below.

The cases cited by the Court below in support of the doctrine of non-patentability were fully considered in appellants' former brief at pages 42 to 45; but it may not be amiss to refer briefly to the additional cases now cited by the appellees.

Some of these cases turned upon the application of the familiar doctrine that *a mere change of degree is not patentable.*

This was the case in *Burt vs. Evory*, 133 U. S., 349, and in *French vs. Carter*, 137 U. S., 239.

In *Burt vs. Evory*, the invention related to a water-tight shoe which differed only in degree from what was old in the art.

The Court said:

> "The changes made by Evory and Heston [the "patentees] in the construction of a water-tight shoe were "changes of degree only, and did not involve any new "principle. Their shoe performed no new function. "* * * The test [of patentability] is that the improve- "ment must be the product of an original conception; "* * * and a mere carrying forward or more extended "application of an original idea—a mere improvement in "degree—is not invention."

This language of the Court was borrowed fom the text of the decision rendered in *Smith vs. Nichols*, 21 Wall., 112, from which decision the Court also made other quotations, showing what *may* be patentable as opposed to "a change only in form, proportion or degree." The Court, in the earlier case, said:

> "A new idea may be engrafted upon an old invention, "be distinct from the conception which preceded it, and "be an improvement; in such a case it is patentable."

The case now at bar is not one which involves a change in degree. The Cluett invention embodies a "new idea"—engrafted upon an old invention, to be sure, but yet "distinct from the conception which preceded it." Moreover, it is an admitted "improvement." Therefore, patentable.

In *French vs. Carter*, 137 U. S., 239, the Court held that the details of construction in the roofs of vaults (the subject of the patent) presented a question which was "one of degree only."

Another class of cases referred to by appellees in their brief turned upon the doctrine of *double use.*

Thus, *Collins Co. vs. Coes*, 130 U. S., 56, the Court said:

> "The application to the bar of the Coes wrench, for the "purpose of securing and supporting the step and resist- "ing the strain, of a nut *already in use for the same pur- "pose*, on the Hewitt & Dixie wrench, lacks the novelty of "invention requisite to support a patent."

This doctrine of double use requires that the old device be used in substantially the same way, for substantially the same purpose, and with the production of substantially the same results. In the Cluett invention the "folded binding" is used in a new combination, not analogous to any previous use, and is used to accomplish results new to the art.

In *Peters vs. Active Mnfg. Co.*, 130 U. S., 636, the patent

sought to cover the adaptation of dies to the shape of a particular article to be struck up in them.

The Court said:

> "In view of the prior state of the art, all that remained to "be done in the present case, as in other cases, was to "adapt the form of the dies to the shape desired in the "article to be acted on by them."

In *Germain vs. Brunswick*, 135 U. S., 227, the invention consisted in making the rack for billiard cues circular in form, and mounting it on a revolving support. In view of analogous structures, like revolving casters, dining tables and book racks, the Court said:

> "The case falls within the familiar rule that an applica- "tion of an old process or machine or apparatus to a sim- "ilar or analogous subject, with no change in the manner "of application, and no result substantially distinct in its "nature, will not sustain a patent."

In *Dreyfus vs. Searle*, 124 U. S., 60, the patent was for a method of imparting age to wines, liquors, &c., by introducing heat into the liquid by means of steam passing through pipes arranged in the interior of the cask or vessel. The Court held that the patent was not good for the apparatus, as that was old in its general application to the heating of liquids. It also held that the patent was not good as for a process, since wines and liquors had already been "aged" by the application of heat by other means, and since no new result as compared with the old modes was secured by this particular means of applying the heat.

In *Holland vs. Shipley*, 127 U. S., 396, the Court held that the patented lead-holder for pencils involved merely a *double use* of old and well-known devices; and the case of *Munson vs. New York City*, 124 U. S., 601, involving a patent on a bond book, also turned upon this doctrine *of double use*.

The case of *Aron vs. Manhattan Railway Co.*, 132 U. S., 84,

also turned upon the doctrine of *double use*. The patent was for an improvement in railway gates—similar to those in use on the elevated railway in New York City.

The Court said :

> " The combination referred to in the several claims are
> " merely the application to a new situation of old devices
> " which had been previously applied to analogous uses.
> " * * * It seems impossible to doubt that any competent
> " mechanic, familiar with devices well known in the state
> " of the art, could have done this readily and successfully
> " upon the mere suggestion of the purpose which it was
> " desirable to effect."

In *Marchand vs. Emken*, 132 U. S., 195, the patent related to the manufacture of hydrogen peroxide ; and the essence of the invention consisted in the use of a horizontal screw as a mixer of the liquid. It appeared that this device was not new as a means for agitating liquid masses ; and the Court found that no useful result followed from the use of this particular mechanical means for stirring this particular liquid as compared with other modes previously in use for the same purpose.

Another class of cases cited by appellees were decided upon the application of the well-known doctrine of *aggregation*.

In *Mosler Safe Co. vs. Mosler*, 127 U. S., 354, the Court found that, as the different parts of the patented fire-proof safe were all old, and as they acted independently in the new association, there was no patentable combination.

The Court said :

> " The combination is nothing more than an aggregation,
> " and falls by the application of the rulings in *Hailes vs.*
> " *Van Wormer*, 20 Wall., 368 ; *Reckendorfer vs. Faber*, 92
> " U. S. ; and *Pickering vs. McCullough*, 104 U. S., 318.

In *Hendy vs. Miners' Iron Co.*, 127 U. S., 370, the alleged

invention consisted in mounting the movable timbers of the feeding cylinder of an ore-stamp *upon rollers*. The Court said:

> "There is no patentable combination, but merely an aggregation of the rollers and the feeding cylinder."

In *Royer vs. Roth*, 132 U. S., 201, the patent related to the attachment to an ordinary rawhide-fulling machine of an old automatic shifting device. This shifting mechanism was old in connection with washing machines, and its action was not modified when applied to the rawhide machine. The Court held that there was no patentable combination between the two mechanisms, but only a mere aggregation of devices.

Another class of cases cited by appellees involved a *mere change of material.*

In *Brown vs. District of Columbia*, 130 U. S., 87, the alleged invention was for a wood pavement, the blocks of which had plain faces, with one or more of the sides inclined. Blocks of similar form, but made of stone, had been used before.

The Court said:

> "The blocks of the Lindsay patent are of the same shape
> " as those of Cowing [the patent in suit], but are of stone,
> " while the latter are of wood; but it is nothing more than
> " the substitution of one material for another, without in-
> " volving a new mode of construction or developing any-
> " thing substantially new in the resulting pavement."

The invention in *Shenfield vs. Nashawannuck Co.*, 137 U. S., 56, related to the making of button loops of suspenders out of flat cord. Evidently, the Court regarded this as a *mere change of material*, without any useful result.

The other cases cited by appellees are as follows:

Crescent Company vs. Gottfried, 128 U. S., 158; where the

Court held that one of the claims of the patent was anticipated, and that there was no infringement of the other claim.

Peters vs. Hanson, 129 U. S., 541, involving a patent for dash-frames for vehicles; where the Court held that the details of construction covered by the claims involved only the use of everyday workshop expedients, made obvious by changes in the general mode of manufacture which had been introduced prior to the alleged invention.

Horncrook vs. Root, 127 U. S., 176, involving a patent for sectional honey frames; where the Court held simply that there was *no novelty* in the patented invention.

Appellants submit that none of the cases thus cited are germane to the cases at bar. These new cases, now cited, like the cases relied upon by the Court below, all turn on the familiar doctrine of *double use*, *aggregation*, mere *change of form* or *degree* or *material*, and the exercise of *ordinary judgment*.

It is not seen how the Cluett invention can be assigned to any one of these categories. Cluett made use of old devices, to be sure—a shirt bosom, a shirt body and a folded binding; but these three elements of construction had never before been associated in the new relation which his ingenuity established, nor applied to the accomplishment of any analogous purpose. Moreover, the association of these elements in this new relation constitutes a veritable *combination*, each of the parts contributing an important service towards the accomplishment of a *new and unitary purpose*.

This new combination, again, was the product of an original conception on Cluett's part, being the result of much thought and study and experiments; and it obviated difficulties that had long existed, but which neither he nor others, by repeated trials, had been able previously to overcome. The result has

been marked improvement in the art, by the production of an article that has proved of great commercial value.

These conditions stamp Cluett's work as a genuine and meritorious *invention.*

Moreover, it seems to appellants that a strong argument in favor of the patentability of the Cluett invention is to be drawn from the fact that numerous other patents, relating to the application of binding to shirt bosoms, have been granted by the Patent Office, and that not a few of these very patents have been issued to some of the defendants in these suits. It is specially significant in this connection that the solicitor, Dr. W. E. Hagan, through whom many of these letters patent were obtained, is the very man upon whose professed opinion the defendants now rely to belittle and destroy the patent which lies at the very foundation of this great improvement in the art.

V.

The Cluett patent should be sustained, and decrees entered for the plaintiff.

S. A. Duncan,
J. A. Skilton,
Of Counsel for Appellants.

Office Supreme Court U. S.
FILED.
APR 17 1891
JAMES H. McKENNEY.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 175.

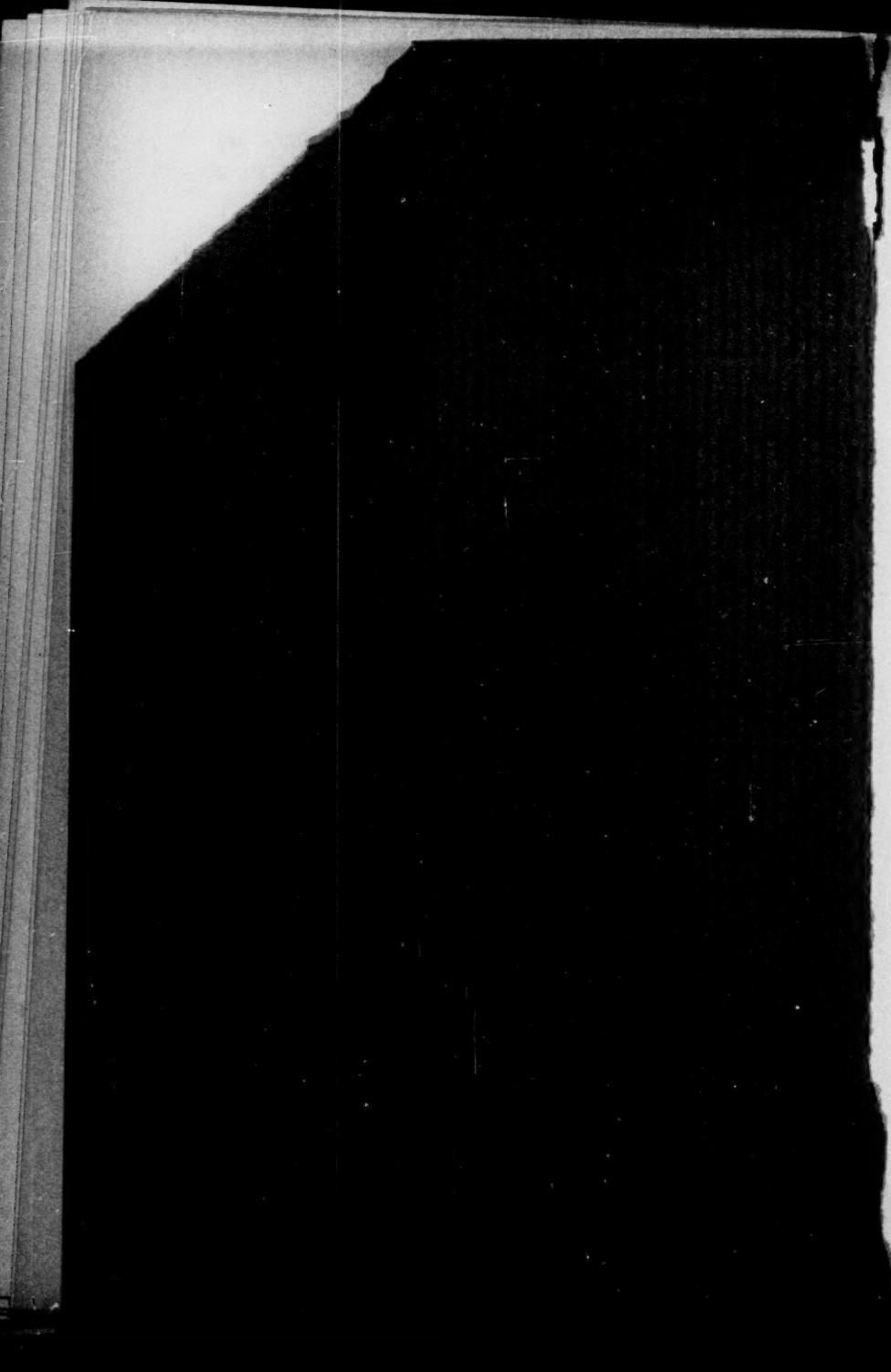
GEORGE B. CLUETT AND OTHERS,
Appellants,
vs.
JOHN McNEANY, E. E. MACK AND W. M. TICKNOR (MACK & Co).,
Appellees.
IN EQUITY.

BRIEF FOR APPELLANTS.

J. A. SKILTON,
Attorney for Appellants.

S. A. DUNCAN,
Of Counsel.

C. G. BURGOYNE, WALKER AND CENTRE STS., N. Y.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 175.

GEORGE B. CLUETT and others,
Appellants,

vs.

JOHN MCNEANY, E. E. MACK and W. M. TICKNOR, firm of Mack & Co.,
Appellees.

In Equity.

Brief for Appellants.

This is a suit in equity originating in the Circuit Court of the United States for the Southern District of New York.

The plaintiffs are the same as in the companion suit, No. 174 on the present docket of the Court; and the subject matter of the controversy is the alleged infringement of the same patent that is involved in the said suit, viz.: No. 156,880, for an "*Improvement in Shirts*," granted to Robert Cluett November 17, 1874.

On final hearing at the Circuit the Court entered a decree dismissing the bill, with costs (page 40); and from that decree the plaintiffs took the present appeal.

By stipulation between the parties (page 41), the testimony taken in the suit of *George B. Cluett et al. vs. Horace B. Claflin et al.* (being No. 174 of the present docket) is to be read and

used on the hearing of this appeal the same as if taken as a part of the record herein.

By this stipulation, in connection with the pleadings, it will be seen that the questions involved and decided are in all respects the same as in the aforesaid suit No. 174, except the question of infringement.

Counsel for appellants, therefore, refer to their brief in the said case No. 174 as to all questions other than that of infringement.

Alleged Infringement.

The defendants Mack & Co. are manufacturers of what is known as the "Big Boston" shirt, being a shirt constructed in its main features in accordance with the patent granted to their superintendent, Isaac H. Mambert, No. 219,284, under date of September 2, 1879.

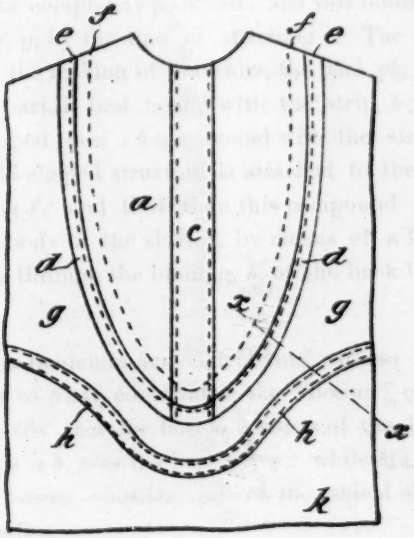
See pages 442–3 of the Record.

One of these shirts is in evidence as "Complts. Exhibit Defendants' Shirt" (p. 13); and its construction and relation to the patent in suit are fully set forth by the witness Benjamin on pages 13–16.

An examination of the exhibit shirt shows that its construction is as represented in the accompanying sketch, in which Fig. 1 is a front view of a section of the exhibit, and Fig. 2 shows on an exaggerated scale the relations of the different parts, and notably the construction of the seams.

An examination of the exhibit shirt shows that the shield-shaped portion of the bosom consists of two plies or thicknesses of material, *a b*, having one central pleat, *c*. The edges of these two plies lie flat, and are pocketed by means of a binding strip, *d*, both edges of which strip are folded in under the body of the strip, so that the raw edges of the binding itself, as well as the edges of the bosom plies, are pocketed. A single line of stitches, *e*, secures this folded binding to the

Fig. 1



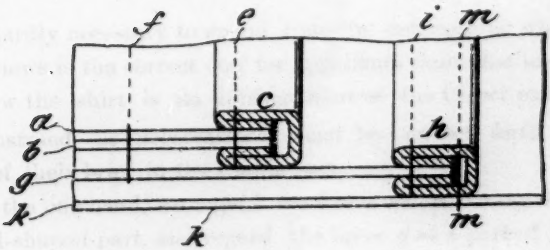
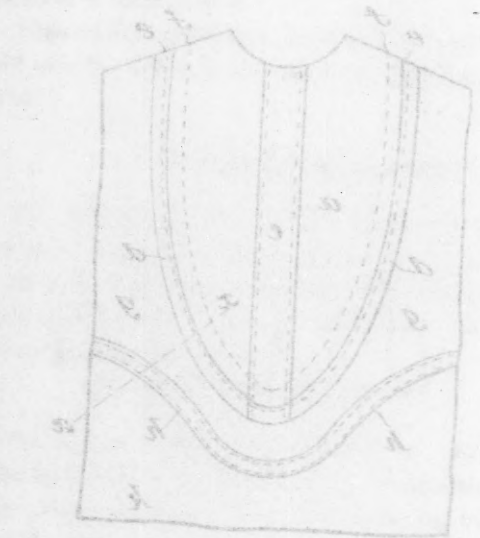
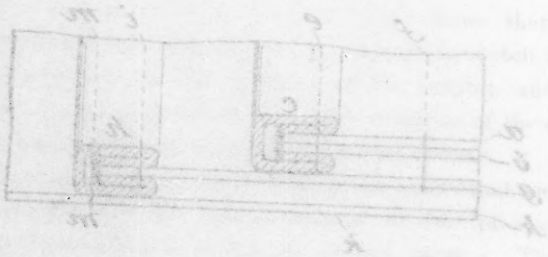


Fig. 2

Section on line x-x





edges of the two plies. Lying beneath this bound shield-shaped fabric, and attached to it by a row of stitching, *f*, is another ply or thickness of material, *g*, larger than the shield-shaped part; and the raw edges of this layer, *g*, are bound by another folded strip, *h*, the edges of which are folded under in such a way as to be completely pocketed; and this binding, *h*, is secured to the ply, *g*, by the line of stitching *i*. The testimony shows that in the making of the shirt, the back ply, *g*, of the front or bosom part, is first bound with the strip, *h*; that then the shield-shaped plies *a b* are bound with the strip *d*; that next this shield-shaped structure is attached to the back ply *g* by the stitching *f*; and that then this compound fabric is secured to the body of the shirt, *k*, by means of a line of stitching, *m*, passing through the binding, *h*, of the back bosom ply, *g*.

Plaintiffs' witness Benjamin and defendants' witness Mambert do not agree as to what constitutes the "bosom" of this shirt. Benjamin holds that the bosom consists of the bound shield-shaped pieces *a b*, *plus* the back ply *g*; while Mambert contends that the bosom consists only of the shield-shaped pieces with their binding.

It is hardly necessary to spend time in determining which of these views is the correct one, for appellants claim that under either view the shirt is an infringement of the Cluett patent when construed—as necessarily it must be—as set forth on page 10 of their brief in the Claflin suit.

If, on the one hand, we regard the *bosom* as embracing only the shield-shaped part, and regard the layer *g* as a part of the *body* of the shirt, the structure would undoubtedly infringe the second claim of the patent. The bosom of the shirt would be composed of two thicknesses of material; it would be bound on its outer edge by a folded binding (binding B″) and it would be secured to the shirt front by a line of stitching. The